

Effective 5/3/2023

Chapter 2 Licensing and Certifications

Part 1 Human Services Programs and Facilities

26B-2-101 Definitions.

As used in this part:

- (1) "Adoption services" means the same as that term is defined in Section 80-2-801.
- (2) "Adult day care" means nonresidential care and supervision:
 - (a) for three or more adults for at least four but less than 24 hours a day; and
 - (b) that meets the needs of functionally impaired adults through a comprehensive program that provides a variety of health, social, recreational, and related support services in a protective setting.
- (3) "Applicant" means a person that applies for an initial license or a license renewal under this part.
- (4)
 - (a) "Associated with the licensee" means that an individual is:
 - (i) affiliated with a licensee as an owner, director, member of the governing body, employee, agent, provider of care, department contractor, or volunteer; or
 - (ii) applying to become affiliated with a licensee in a capacity described in Subsection (4)(a)(i).
 - (b) "Associated with the licensee" does not include:
 - (i) service on the following bodies, unless that service includes direct access to a child or a vulnerable adult:
 - (A) a local mental health authority described in Section 17-43-301;
 - (B) a local substance abuse authority described in Section 17-43-201; or
 - (C) a board of an organization operating under a contract to provide mental health or substance use programs, or services for the local mental health authority or substance abuse authority; or
 - (ii) a guest or visitor whose access to a child or a vulnerable adult is directly supervised at all times.
- (5)
 - (a) "Boarding school" means a private school that:
 - (i) uses a regionally accredited education program;
 - (ii) provides a residence to the school's students:
 - (A) for the purpose of enabling the school's students to attend classes at the school; and
 - (B) as an ancillary service to educating the students at the school;
 - (iii) has the primary purpose of providing the school's students with an education, as defined in Subsection (5)(b)(i); and
 - (iv)
 - (A) does not provide the treatment or services described in Subsection (38)(a); or
 - (B) provides the treatment or services described in Subsection (38)(a) on a limited basis, as described in Subsection (5)(b)(ii).
 - (b)
 - (i) For purposes of Subsection (5)(a)(iii), "education" means a course of study for one or more grades from kindergarten through grade 12.

- (ii) For purposes of Subsection (5)(a)(iv)(B), a private school provides the treatment or services described in Subsection (38)(a) on a limited basis if:
 - (A) the treatment or services described in Subsection (38)(a) are provided only as an incidental service to a student; and
 - (B) the school does not:
 - (I) specifically solicit a student for the purpose of providing the treatment or services described in Subsection (38)(a); or
 - (II) have a primary purpose of providing the treatment or services described in Subsection (38)(a).
 - (c) "Boarding school" does not include a therapeutic school.
- (6) "Child" means an individual under 18 years old.
- (7) "Child placing" means receiving, accepting, or providing custody or care for any child, temporarily or permanently, for the purpose of:
 - (a) finding a person to adopt the child;
 - (b) placing the child in a home for adoption; or
 - (c) foster home placement.
- (8) "Child-placing agency" means a person that engages in child placing.
- (9) "Client" means an individual who receives or has received services from a licensee.
- (10)
 - (a) "Congregate care program" means any of the following that provide services to a child:
 - (i) an outdoor youth program;
 - (ii) a residential support program;
 - (iii) a residential treatment program; or
 - (iv) a therapeutic school.
 - (b) "Congregate care program" does not include a human services program that:
 - (i) is licensed to serve adults; and
 - (ii) is approved by the office to service a child for a limited time.
- (11) "Day treatment" means specialized treatment that is provided to:
 - (a) a client less than 24 hours a day; and
 - (b) four or more persons who:
 - (i) are unrelated to the owner or provider; and
 - (ii) have emotional, psychological, developmental, physical, or behavioral dysfunctions, impairments, or chemical dependencies.
- (12) "Department contractor" means an individual who:
 - (a) provides services under a contract with the department; and
 - (b) due to the contract with the department, has or will likely have direct access to a child or vulnerable adult.
- (13) "Direct access" means that an individual has, or likely will have:
 - (a) contact with or access to a child or vulnerable adult that provides the individual with an opportunity for personal communication or touch; or
 - (b) an opportunity to view medical, financial, or other confidential personal identifying information of the child, the child's parents or legal guardians, or the vulnerable adult.
- (14) "Directly supervised" means that an individual is being supervised under the uninterrupted visual and auditory surveillance of another individual who has a current background screening approval issued by the office.
- (15) "Director" means the director of the office.
- (16) "Domestic violence" means the same as that term is defined in Section 77-36-1.

- (17) "Domestic violence treatment program" means a nonresidential program designed to provide psychological treatment and educational services to perpetrators and victims of domestic violence.
- (18) "Elder adult" means a person 65 years old or older.
- (19) "Foster home" means a residence that is licensed or certified by the office for the full-time substitute care of a child.
- (20) "Health benefit plan" means the same as that term is defined in Section 31A-22-634.
- (21) "Health care provider" means the same as that term is defined in Section 78B-3-403.
- (22) "Health insurer" means the same as that term is defined in Section 31A-22-615.5.
- (23)
 - (a) "Human services program" means:
 - (i) a foster home;
 - (ii) a therapeutic school;
 - (iii) a youth program;
 - (iv) an outdoor youth program;
 - (v) a residential treatment program;
 - (vi) a residential support program;
 - (vii) a resource family home;
 - (viii) a recovery residence; or
 - (ix) a facility or program that provides:
 - (A) adult day care;
 - (B) day treatment;
 - (C) outpatient treatment;
 - (D) domestic violence treatment;
 - (E) child-placing services;
 - (F) social detoxification; or
 - (G) any other human services that are required by contract with the department to be licensed with the department.
 - (b) "Human services program" does not include:
 - (i) a boarding school; or
 - (ii) a residential, vocational and life skills program, as defined in Section 13-53-102.
- (24) "Indian child" means the same as that term is defined in 25 U.S.C. Sec. 1903.
- (25) "Indian country" means the same as that term is defined in 18 U.S.C. Sec. 1151.
- (26) "Indian tribe" means the same as that term is defined in 25 U.S.C. Sec. 1903.
- (27) "Intermediate secure treatment" means 24-hour specialized residential treatment or care for an individual who:
 - (a) cannot live independently or in a less restrictive environment; and
 - (b) requires, without the individual's consent or control, the use of locked doors to care for the individual.
- (28) "Licensee" means an individual or a human services program licensed by the office.
- (29) "Local government" means a city, town, metro township, or county.
- (30) "Minor" means child.
- (31) "Office" means the Office of Licensing within the department.
- (32) "Outdoor youth program" means a program that provides:
 - (a) services to a child that has:
 - (i) a chemical dependency; or
 - (ii) a dysfunction or impairment that is emotional, psychological, developmental, physical, or behavioral;

- (b) a 24-hour outdoor group living environment; and
- (c)
 - (i) regular therapy, including group, individual, or supportive family therapy; or
 - (ii) informal therapy or similar services, including wilderness therapy, adventure therapy, or outdoor behavioral healthcare.
- (33) "Outpatient treatment" means individual, family, or group therapy or counseling designed to improve and enhance social or psychological functioning for those whose physical and emotional status allows them to continue functioning in their usual living environment.
- (34) "Practice group" or "group practice" means two or more health care providers legally organized as a partnership, professional corporation, or similar association, for which:
 - (a) substantially all of the services of the health care providers who are members of the group are provided through the group and are billed in the name of the group and amounts received are treated as receipts of the group; and
 - (b) the overhead expenses of and the income from the practice are distributed in accordance with methods previously determined by members of the group.
- (35) "Private-placement child" means a child whose parent or guardian enters into a contract with a congregate care program for the child to receive services.
- (36)
 - (a) "Recovery residence" means a home, residence, or facility that meets at least two of the following requirements:
 - (i) provides a supervised living environment for individuals recovering from a substance use disorder;
 - (ii) provides a living environment in which more than half of the individuals in the residence are recovering from a substance use disorder;
 - (iii) provides or arranges for residents to receive services related to the resident's recovery from a substance use disorder, either on or off site;
 - (iv) is held out as a living environment in which individuals recovering from substance abuse disorders live together to encourage continued sobriety; or
 - (v)
 - (A) receives public funding; or
 - (B) is run as a business venture, either for-profit or not-for-profit.
 - (b) "Recovery residence" does not mean:
 - (i) a residential treatment program;
 - (ii) residential support program; or
 - (iii) a home, residence, or facility, in which:
 - (A) residents, by a majority vote of the residents, establish, implement, and enforce policies governing the living environment, including the manner in which applications for residence are approved and the manner in which residents are expelled;
 - (B) residents equitably share rent and housing-related expenses; and
 - (C) a landlord, owner, or operator does not receive compensation, other than fair market rental income, for establishing, implementing, or enforcing policies governing the living environment.
- (37) "Regular business hours" means:
 - (a) the hours during which services of any kind are provided to a client; or
 - (b) the hours during which a client is present at the facility of a licensee.
- (38)
 - (a) "Residential support program" means a program that arranges for or provides the necessities of life as a protective service to individuals or families who have a disability or who are

experiencing a dislocation or emergency that prevents them from providing these services for themselves or their families.

- (b) "Residential support program" includes a program that provides a supervised living environment for individuals with dysfunctions or impairments that are:
 - (i) emotional;
 - (ii) psychological;
 - (iii) developmental; or
 - (iv) behavioral.
 - (c) Treatment is not a necessary component of a residential support program.
 - (d) "Residential support program" does not include:
 - (i) a recovery residence; or
 - (ii) a program that provides residential services that are performed:
 - (A) exclusively under contract with the department and provided to individuals through the Division of Services for People with Disabilities; or
 - (B) in a facility that serves fewer than four individuals.
- (39)
- (a) "Residential treatment" means a 24-hour group living environment for four or more individuals unrelated to the owner or provider that offers room or board and specialized treatment, behavior modification, rehabilitation, discipline, emotional growth, or habilitation services for persons with emotional, psychological, developmental, or behavioral dysfunctions, impairments, or chemical dependencies.
 - (b) "Residential treatment" does not include a:
 - (i) boarding school;
 - (ii) foster home; or
 - (iii) recovery residence.
- (40) "Residential treatment program" means a program or facility that provides:
- (a) residential treatment; or
 - (b) intermediate secure treatment.
- (41) "Seclusion" means the involuntary confinement of an individual in a room or an area:
- (a) away from the individual's peers; and
 - (b) in a manner that physically prevents the individual from leaving the room or area.
- (42) "Social detoxification" means short-term residential services for persons who are experiencing or have recently experienced drug or alcohol intoxication, that are provided outside of a health care facility licensed under Part 2, Health Care Facility Licensing and Inspection, and that include:
- (a) room and board for persons who are unrelated to the owner or manager of the facility;
 - (b) specialized rehabilitation to acquire sobriety; and
 - (c) aftercare services.
- (43) "Substance abuse disorder" or "substance use disorder" mean the same as "substance use disorder" is defined in Section 26B-5-501.
- (44) "Substance abuse treatment program" or "substance use disorder treatment program" means a program:
- (a) designed to provide:
 - (i) specialized drug or alcohol treatment;
 - (ii) rehabilitation; or
 - (iii) habilitation services; and
 - (b) that provides the treatment or services described in Subsection (44)(a) to persons with:
 - (i) a diagnosed substance use disorder; or

- (ii) chemical dependency disorder.
- (45) "Therapeutic school" means a residential group living facility:
 - (a) for four or more individuals that are not related to:
 - (i) the owner of the facility; or
 - (ii) the primary service provider of the facility;
 - (b) that serves students who have a history of failing to function:
 - (i) at home;
 - (ii) in a public school; or
 - (iii) in a nonresidential private school; and
 - (c) that offers:
 - (i) room and board; and
 - (ii) an academic education integrated with:
 - (A) specialized structure and supervision; or
 - (B) services or treatment related to:
 - (I) a disability;
 - (II) emotional development;
 - (III) behavioral development;
 - (IV) familial development; or
 - (V) social development.
- (46) "Unrelated persons" means persons other than parents, legal guardians, grandparents, brothers, sisters, uncles, or aunts.
- (47) "Vulnerable adult" means an elder adult or an adult who has a temporary or permanent mental or physical impairment that substantially affects the person's ability to:
 - (a) provide personal protection;
 - (b) provide necessities such as food, shelter, clothing, or mental or other health care;
 - (c) obtain services necessary for health, safety, or welfare;
 - (d) carry out the activities of daily living;
 - (e) manage the adult's own resources; or
 - (f) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.
- (48)
 - (a) "Youth program" means a program designed to provide behavioral, substance use, or mental health services to minors that:
 - (i) serves adjudicated or nonadjudicated youth;
 - (ii) charges a fee for the program's services;
 - (iii) may provide host homes or other arrangements for overnight accommodation of the youth;
 - (iv) may provide all or part of the program's services in the outdoors;
 - (v) may limit or censor access to parents or guardians; and
 - (vi) prohibits or restricts a minor's ability to leave the program at any time of the minor's own free will.
 - (b) "Youth program" does not include recreational programs such as Boy Scouts, Girl Scouts, 4-H, and other such organizations.
- (49)
 - (a) "Youth transportation company" means any person that transports a child for payment to or from a congregate care program in Utah.
 - (b) "Youth transportation company" does not include:
 - (i) a relative of the child;
 - (ii) a state agency; or

- (iii) a congregate care program's employee who transports the child from the congregate care program that employs the employee and returns the child to the same congregate care program.

Amended by Chapter 305, 2023 General Session

26B-2-102 Purpose of licensure.

The purpose of licensing under this part is to permit or authorize a public or private agency to provide defined human services programs within statutory and regulatory guidelines.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-103 Office of Licensing -- Appointment -- Qualifications of director.

- (1) There is created the Office of Licensing within the department.
- (2) The office shall be the licensing authority for the department, and is vested with all the powers, duties, and responsibilities described in:
 - (a) this part;
 - (b) Part 2, Health Care Facility Licensing and Inspection; and
 - (c) Part 6, Mammography Quality Assurance.
- (3) The executive director shall appoint the director of the office.
- (4) The director shall have a bachelor's degree from an accredited university or college, be experienced in administration, and be knowledgeable of health and human services licensing.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-104 Office responsibilities.

- (1) Subject to the requirements of federal and state law, the office shall:
 - (a) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish:
 - (i) except as provided in Subsection (1)(a)(ii), basic health and safety standards for licensees, that shall be limited to:
 - (A) fire safety;
 - (B) food safety;
 - (C) sanitation;
 - (D) infectious disease control;
 - (E) safety of the:
 - (I) physical facility and grounds; and
 - (II) area and community surrounding the physical facility;
 - (F) transportation safety;
 - (G) emergency preparedness and response;
 - (H) the administration of medical standards and procedures, consistent with the related provisions of this title;
 - (I) staff and client safety and protection;
 - (J) the administration and maintenance of client and service records;
 - (K) staff qualifications and training, including standards for permitting experience to be substituted for education, unless prohibited by law;
 - (L) staff to client ratios;
 - (M) access to firearms; and

- (N) the prevention of abuse, neglect, exploitation, harm, mistreatment, or fraud;
- (ii) basic health and safety standards for therapeutic schools, that shall be limited to:
 - (A) fire safety, except that the standards are limited to those required by law or rule under Title 53, Chapter 7, Part 2, Fire Prevention and Fireworks Act;
 - (B) food safety;
 - (C) sanitation;
 - (D) infectious disease control, except that the standards are limited to:
 - (I) those required by law or rule under this title, or Title 26A, Local Health Authorities; and
 - (II) requiring a separate room for clients who are sick;
 - (E) safety of the physical facility and grounds, except that the standards are limited to those required by law or rule under Title 53, Chapter 7, Part 2, Fire Prevention and Fireworks Act;
 - (F) transportation safety;
 - (G) emergency preparedness and response;
 - (H) access to appropriate medical care, including:
 - (I) subject to the requirements of law, designation of a person who is authorized to dispense medication; and
 - (II) storing, tracking, and securing medication;
 - (I) staff and client safety and protection that permits the school to provide for the direct supervision of clients at all times;
 - (J) the administration and maintenance of client and service records;
 - (K) staff qualifications and training, including standards for permitting experience to be substituted for education, unless prohibited by law;
 - (L) staff to client ratios;
 - (M) access to firearms; and
 - (N) the prevention of abuse, neglect, exploitation, harm, mistreatment, or fraud;
- (iii) procedures and standards for permitting a licensee to:
 - (A) provide in the same facility and under the same conditions as children, residential treatment services to a person 18 years old or older who:
 - (I) begins to reside at the licensee's residential treatment facility before the person's 18th birthday;
 - (II) has resided at the licensee's residential treatment facility continuously since the time described in Subsection (1)(a)(iii)(A)(I);
 - (III) has not completed the course of treatment for which the person began residing at the licensee's residential treatment facility; and
 - (IV) voluntarily consents to complete the course of treatment described in Subsection (1)(a)(iii)(A)(III); or
 - (B)
 - (I) provide residential treatment services to a child who is:
 - (Aa) at least 12 years old or, as approved by the office, younger than 12 years old; and
 - (Bb) under the custody of the department, or one of its divisions; and
 - (II) provide, in the same facility as a child described in Subsection (1)(a)(iii)(B)(I), residential treatment services to a person who is:
 - (Aa) at least 18 years old, but younger than 21 years old; and
 - (Bb) under the custody of the department, or one of its divisions;
- (iv) minimum administration and financial requirements for licensees;
- (v) guidelines for variances from rules established under this Subsection (1);

- (vi) ethical standards, as described in Subsection 78B-6-106(3), and minimum responsibilities of a child-placing agency that provides adoption services and that is licensed under this part;
 - (vii) what constitutes an "outpatient treatment program" for purposes of this part;
 - (viii) a procedure requiring a licensee to provide an insurer the licensee's records related to any services or supplies billed to the insurer, and a procedure allowing the licensee and the insurer to contact the Insurance Department to resolve any disputes;
 - (ix) a protocol for the office to investigate and process complaints about licensees;
 - (x) a procedure for a licensee to:
 - (A) report the use of a restraint or seclusion within one business day after the day on which the use of the restraint or seclusion occurs; and
 - (B) report a critical incident within one business day after the day on which the incident occurs;
 - (xi) guidelines for the policies and procedures described in Sections 26B-2-109 and 26B-2-123;
 - (xii) a procedure for the office to review and approve the policies and procedures described in Sections 26B-2-109 and 26B-2-123; and
 - (xiii) a requirement that each human services program publicly post information that informs an individual how to submit a complaint about a human services program to the office;
 - (b) enforce rules relating to the office;
 - (c) issue licenses in accordance with this part;
 - (d) if the United States Department of State executes an agreement with the office that designates the office to act as an accrediting entity in accordance with the Intercountry Adoption Act of 2000, Pub. L. No. 106-279, accredit one or more agencies and persons to provide intercountry adoption services pursuant to:
 - (i) the Intercountry Adoption Act of 2000, Pub. L. No. 106-279; and
 - (ii) the implementing regulations for the Intercountry Adoption Act of 2000, Pub. L. No. 106-279;
 - (e) make rules to implement the provisions of Subsection (1)(d);
 - (f) conduct surveys and inspections of licensees and facilities in accordance with Section 26B-2-107;
 - (g) collect licensure fees;
 - (h) notify licensees of the name of a person within the department to contact when filing a complaint;
 - (i) investigate complaints regarding any licensee or human services program;
 - (j) have access to all records, correspondence, and financial data required to be maintained by a licensee;
 - (k) have authority to interview any client, family member of a client, employee, or officer of a licensee;
 - (l) have authority to deny, condition, revoke, suspend, or extend any license issued by the department under this part by following the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act;
 - (m) electronically post notices of agency action issued to a human services program, with the exception of a foster home, on the office's website, in accordance with Title 63G, Chapter 2, Government Records Access and Management Act; and
 - (n) upon receiving a local government's request under Section 26B-2-118, notify the local government of new human services program license applications, except for foster homes, for human services programs located within the local government's jurisdiction.
- (2) In establishing rules under Subsection (1)(a)(ii)(G), the office shall require a licensee to establish and comply with an emergency response plan that requires clients and staff to:

- (a) immediately report to law enforcement any significant criminal activity, as defined by rule, committed:
 - (i) on the premises where the licensee operates its human services program;
 - (ii) by or against its clients; or
 - (iii) by or against a staff member while the staff member is on duty;
- (b) immediately report to emergency medical services any medical emergency, as defined by rule:
 - (i) on the premises where the licensee operates its human services program;
 - (ii) involving its clients; or
 - (iii) involving a staff member while the staff member is on duty; and
- (c) immediately report other emergencies that occur on the premises where the licensee operates its human services program to the appropriate emergency services agency.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-105 Licensure requirements -- Expiration -- Renewal.

- (1) Except as provided in Section 26B-2-115, an individual, agency, firm, corporation, association, or governmental unit acting severally or jointly with any other individual, agency, firm, corporation, association, or governmental unit may not establish, conduct, or maintain a human services program in this state without a valid and current license issued by and under the authority of the office as provided by this part and the rules under the authority of this part.
- (2)
 - (a) For purposes of this Subsection (2), "member" means a person or entity that is associated with another person or entity:
 - (i) as a member;
 - (ii) as a partner;
 - (iii) as a shareholder; or
 - (iv) as a person or entity involved in the ownership or management of a human services program owned or managed by the other person or entity.
 - (b) A license issued under this part may not be assigned or transferred.
 - (c) An application for a license under this part shall be treated as an application for reinstatement of a revoked license if:
 - (i)
 - (A) the person or entity applying for the license had a license revoked under this part; and
 - (B) the revoked license described in Subsection (2)(c)(i)(A) is not reinstated before the application described in this Subsection (2)(c) is made; or
 - (ii) a member of an entity applying for the license:
 - (A)
 - (I) had a license revoked under this part; and
 - (II) the revoked license described in Subsection (2)(c)(ii)(A)(I) is not reinstated before the application described in this Subsection (2)(c) is made; or
 - (B)
 - (I) was a member of an entity that had a license revoked under this part at any time before the license was revoked; and
 - (II) the revoked license described in Subsection (2)(c)(ii)(B)(I) is not reinstated before the application described in this Subsection (2)(c) is made.
- (3) A current license shall at all times be posted in the facility where each human services program is operated, in a place that is visible and readily accessible to the public.

- (4)
- (a) Except as provided in Subsection (4)(c), each license issued under this part expires at midnight on the last day of the same month the license was issued, one year following the date of issuance unless the license has been:
 - (i) previously revoked by the office;
 - (ii) voluntarily returned to the office by the licensee; or
 - (iii) extended by the office.
 - (b) A license shall be renewed upon application and payment of the applicable fee, unless the office finds that the licensee:
 - (i) is not in compliance with the:
 - (A) provisions of this part; or
 - (B) rules made under this part;
 - (ii) has engaged in a pattern of noncompliance with the:
 - (A) provisions of this part; or
 - (B) rules made under this part;
 - (iii) has engaged in conduct that is grounds for denying a license under Section 26B-2-112; or
 - (iv) has engaged in conduct that poses a substantial risk of harm to any person.
 - (c) The office may issue a renewal license that expires at midnight on the last day of the same month the license was issued, two years following the date of issuance, if:
 - (i) the licensee has maintained a human services license for at least 24 months before the day on which the licensee applies for the renewal; and
 - (ii) the licensee has not violated this part or a rule made under this part.
- (5) Any licensee that is in operation at the time rules are made in accordance with this part shall be given a reasonable time for compliance as determined by the rule.
- (6)
- (a) A license for a human services program issued under this section shall apply to a specific human services program site.
 - (b) A human services program shall obtain a separate license for each site where the human services program is operated.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-106 License application -- Classification of information.

- (1) An application for a license under this part shall be made to the office and shall contain information that is necessary to comply with approved rules.
- (2) Information received by the office through reports and inspections shall be classified in accordance with Title 63G, Chapter 2, Government Records Access and Management Act.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-107 Administrative inspections.

- (1)
- (a) Subject to Subsection (1)(b), the office may, for the purpose of ascertaining compliance with this part, enter and inspect on a routine basis the facility of a licensee.
 - (b)
 - (i) The office shall enter and inspect a congregate care program at least once each calendar quarter.
 - (ii) At least two of the inspections described in Subsection (1)(b)(i) shall be unannounced.

- (c) If another government entity conducts an inspection that is substantially similar to an inspection conducted by the office, the office may conclude the inspection satisfies an inspection described in Subsection (1)(b).
- (2) Before conducting an inspection under Subsection (1), the office shall, after identifying the person in charge:
 - (a) give proper identification;
 - (b) request to see the applicable license;
 - (c) describe the nature and purpose of the inspection; and
 - (d) if necessary, explain the authority of the office to conduct the inspection and the penalty for refusing to permit the inspection as provided in Section 26B-2-113.
- (3) In conducting an inspection under Subsection (1), the office may, after meeting the requirements of Subsection (2):
 - (a) inspect the physical facilities;
 - (b) inspect and copy records and documents;
 - (c) interview officers, employees, clients, family members of clients, and others; and
 - (d) observe the licensee in operation.
- (4) An inspection conducted under Subsection (1) shall be during regular business hours and may be announced or unannounced.
- (5) The licensee shall make copies of inspection reports available to the public upon request.
- (6) The provisions of this section apply to on-site inspections and do not restrict the office from contacting family members, neighbors, or other individuals, or from seeking information from other sources to determine compliance with this part.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-108 Adoption of inspections, examinations, and studies.

The office may adopt an inspection, examination, or study conducted by a public or private entity, as identified by rule, to determine whether a licensee has complied with a licensing requirement imposed by virtue of this part.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-109 Human services program non-discrimination.

A human services program:

- (1) shall perform an individualized assessment when classifying and placing an individual in programs and living environments; and
- (2) subject to the office's review and approval, shall create policies and procedures that include:
 - (a) a description of what constitutes sex and gender based abuse, discrimination, and harassment;
 - (b) procedures for preventing and reporting abuse, discrimination, and harassment; and
 - (c) procedures for teaching effective and professional communication with individuals of all sexual orientations and genders.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-110 License revocation -- Suspension.

- (1) If a license is revoked, the office may not grant a new license unless:

- (a) the human services program provides satisfactory evidence to the office that the conditions upon which revocation was based have been corrected;
 - (b) the human services program is inspected by the office and found to be in compliance with all provisions of this part and applicable rules;
 - (c) at least five years have passed since the day on which the licensee is served with final notice that the license is revoked; and
 - (d) the office determines that the interests of the public will not be jeopardized by granting the license.
- (2) The office may suspend a license for no longer than three years.
- (3) When a license has been suspended, the office may restore, or restore subject to conditions, the suspended license upon a determination that the:
- (a) conditions upon which the suspension was based have been completely or partially corrected; and
 - (b) interests of the public will not be jeopardized by restoration of the license.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-111 Adjudicative proceedings.

- (1) Whenever the office has reason to believe that a licensee is in violation of this part or rules made under this part, the office may commence adjudicative proceedings to determine the legal rights of the licensee by serving notice of agency action in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
- (2) A licensee, human services program, or individual may commence adjudicative proceedings, in accordance with Title 63G, Chapter 4, Administrative Procedures Act, regarding all office actions that determine the legal rights, duties, privileges, immunities, or other legal interests of the licensee, human services program, or persons associated with the licensee, including all office actions to grant, deny, place conditions on, revoke, suspend, withdraw, or amend an authority, right, or license under this part.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-112 Violations -- Penalties.

- (1) As used in this section, "health care provider" means a person licensed to provide health care services under this part.
- (2) The office may deny, place conditions on, suspend, or revoke a human services license, if the office finds, related to the human services program:
- (a) that there has been a failure to comply with the rules established under this part;
 - (b) evidence of aiding, abetting, or permitting the commission of any illegal act; or
 - (c) evidence of conduct adverse to the standards required to provide services and promote public trust, including aiding, abetting, or permitting the commission of abuse, neglect, exploitation, harm, mistreatment, or fraud.
- (3) The office may restrict or prohibit new admissions to a human services program, if it finds:
- (a) that there has been a failure to comply with rules established under this part;
 - (b) evidence of aiding, abetting, or permitting the commission of any illegal act; or
 - (c) evidence of conduct adverse to the standards required to provide services and promote public trust, including aiding, abetting, or permitting the commission of abuse, neglect, exploitation, harm, mistreatment, or fraud.
- (4)

- (a) The office may assess a fine of up to \$500 per violation against a health care provider that violates Section 31A-26-313.
- (b) The office shall waive the fine described in Subsection (4)(a) if:
 - (i) the health care provider demonstrates to the office that the health care provider mitigated and reversed any damage to the insured caused by the health care provider or third party's violation; or
 - (ii) the insured does not pay the full amount due on the bill that is the subject of the violation, including any interest, fees, costs, and expenses, within 120 days after the day on which the health care provider or third party makes a report to a credit bureau or takes an action in violation of Section 31A-26-313.
- (5) If a congregate care program knowingly fails to comply with the provisions of Section 26B-2-124, the office may impose a penalty on the congregate care program that is less than or equal to the cost of care incurred by the state for a private-placement child described in Subsection 26B-2-124(3).
- (6) The office shall make rules for calculating the cost of care described in Subsection (5) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-113 Violation -- Criminal penalties.

- (1)
 - (a) A person who owns, establishes, conducts, maintains, manages, or operates a human services program in violation of this part is guilty of a class A misdemeanor if the violation endangers or harms the health, welfare, or safety of persons participating in that program.
 - (b) Conviction in a criminal proceeding does not preclude the office from:
 - (i) assessing a civil penalty or an administrative penalty;
 - (ii) denying, placing conditions on, suspending, or revoking a license; or
 - (iii) seeking injunctive or equitable relief.
- (2) Any person that violates a provision of this part, lawful orders of the office, or rules adopted under this part may be assessed a penalty not to exceed the sum of \$10,000 per violation, in:
 - (a) a judicial civil proceeding; or
 - (b) an administrative action in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
- (3) Assessment of a judicial penalty or an administrative penalty does not preclude the office from:
 - (a) seeking criminal penalties;
 - (b) denying, placing conditions on, suspending, or revoking a license; or
 - (c) seeking injunctive or equitable relief.
- (4) The office may assess the human services program the cost incurred by the office in placing a monitor.
- (5) Notwithstanding Subsection (1)(a) and subject to Subsections (1)(b) and (2), an individual is guilty of a class A misdemeanor if the individual knowingly and willfully offers, pays, promises to pay, solicits, or receives any remuneration, including any commission, bonus, kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in kind, or engages in any split-fee arrangement in return for:
 - (a) referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for the treatment of a substance use disorder;
 - (b) receiving a referred individual for the furnishing or arranging for the furnishing of any item or service for the treatment of a substance use disorder; or

- (c) referring a clinical sample to a person, including a laboratory, for testing that is used toward the furnishing of any item or service for the treatment of a substance use disorder.
- (6) Subsection (5) does not prohibit:
 - (a) any discount, payment, waiver of payment, or payment practice not prohibited by 42 U.S.C. Sec. 1320a-7(b) or regulations made under 42 U.S.C. Sec. 1320a-7(b);
 - (b) patient referrals within a practice group;
 - (c) payments by a health insurer who reimburses, provides, offers to provide, or administers health, mental health, or substance use disorder goods or services under a health benefit plan;
 - (d) payments to or by a health care provider, practice group, or substance use disorder treatment program that has contracted with a local mental health authority, a local substance abuse authority, a health insurer, a health care purchasing group, or the Medicare or Medicaid program to provide health, mental health, or substance use disorder services;
 - (e) payments by a health care provider, practice group, or substance use disorder treatment program to a health, mental health, or substance use disorder information service that provides information upon request and without charge to consumers about providers of health care goods or services to enable consumers to select appropriate providers or facilities, if the information service:
 - (i) does not attempt, through standard questions for solicitation of consumer criteria or through any other means, to steer or lead a consumer to select or consider selection of a particular health care provider, practice group, or substance use disorder treatment program;
 - (ii) does not provide or represent that the information service provides diagnostic or counseling services or assessments of illness or injury and does not make any promises of cure or guarantees of treatment; and
 - (iii) charges and collects fees from a health care provider, practice group, or substance use disorder treatment program participating in information services that:
 - (A) are set in advance;
 - (B) are consistent with the fair market value for those information services; and
 - (C) are not based on the potential value of the goods or services that a health care provider, practice group, or substance use disorder treatment program may provide to a patient; or
 - (f) payments by a laboratory to a person that:
 - (i) does not have a financial interest in or with a facility or person who refers a clinical sample to the laboratory;
 - (ii) is not related to an owner of a facility or a person who refers a clinical sample to the laboratory;
 - (iii) is not related to and does not have a financial relationship with a health care provider who orders the laboratory to conduct a test that is used toward the furnishing of an item or service for the treatment of a substance use disorder;
 - (iv) identifies, in advance of providing marketing or sales services, the types of clinical samples that each laboratory will receive, if the person provides marketing or sales services to more than one laboratory;
 - (v) the person does not identify as or hold itself out to be a laboratory or part of a network with an insurance payor, if the person provides marketing or sales services under a contract with a laboratory, as described in Subsection (6)(f)(vii)(B);
 - (vi) the person identifies itself in all marketing materials as a salesperson for a licensed laboratory and identifies each laboratory that the person represents, if the person provides marketing or sales services under a contract with a laboratory, as described in Subsection (6)(f)(vii)(B); and

- (vii)
 - (A) is a sales person employed by the laboratory to market or sell the laboratory's services to a person who provides substance use disorder treatment; or
 - (B) is a person under contract with the laboratory to market or sell the laboratory's services to a person who provides substance use disorder treatment, if the total compensation paid by the laboratory does not exceed the total compensation that the laboratory pays to employees of the laboratory for similar marketing or sales services.
- (7)
 - (a) A person may not knowingly or willfully, in exchange for referring an individual to a youth transportation company:
 - (i) offer, pay, promise to pay, solicit, or receive any remuneration directly or indirectly, overtly or covertly, in cash or in kind, including:
 - (A) a commission;
 - (B) a bonus;
 - (C) a kickback;
 - (D) a bribe; or
 - (E) a rebate; or
 - (ii) engage in any split-fee arrangement.
 - (b) A person who violates Subsection (7)(a) is guilty of a class A misdemeanor and shall be assessed a penalty in accordance with Subsection (2).

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-114 Injunctive relief and other legal procedures.

In addition to, and notwithstanding, any other remedy provided by law the department may, in a manner provided by law and upon the advice of the attorney general, who shall represent the department in the proceedings, maintain an action in the name of the state for injunction or other process against any person or governmental unit to restrain or prevent the establishment, management, or operation of a human services program or facility in violation of this part or rules established under this part.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-115 Exclusions from chapter.

The provisions of this part do not apply to:

- (1) a facility or program owned or operated by an agency of the United States government;
- (2) a facility or program operated by or under an exclusive contract with the Department of Corrections;
- (3) unless required otherwise by a contract with the department, individual or group counseling by a mental health professional licensed under Title 58, Chapter 60, Mental Health Professional Practice Act;
- (4) a general acute hospital, small health care facility, specialty hospital, nursing care facility, or other health care facility licensed by the department under Part 2, Health Care Facility Licensing and Inspection; or
- (5) a boarding school.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-116 Coordination of human services and educational services -- Licensing of programs -- Procedures.

(1) As used in this section:

- (a) "Accredited private school" means a private school that is accredited by an accrediting entity recognized by the Utah State Board of Education.
- (b) "Education entitled children" means children:
 - (i) subject to compulsory education under Section 53G-6-202;
 - (ii) subject to the school attendance requirements of Section 53G-6-203; or
 - (iii) who are eligible for special education services as described in Title 53E, Chapter 7, Part 2, Special Education Program.

(2) Subject to Subsection (9) or (10), a human services program may not be licensed to serve education entitled children unless the human services program presents an educational service plan that includes evidence:

- (a) satisfactory to:
 - (i) the office; and
 - (ii)
 - (A) the local school board of the school district in which the human services program will be operated; or
 - (B) the school district superintendent of the school district in which the human services program will be operated; and
- (b) that children served by the human services program shall receive appropriate educational services satisfying the requirements of applicable law.

(3) An educational services plan may be accepted if the educational services plan includes:

- (a) the following information provided by the human services program:
 - (i) the number of children served by the human services program estimated to be enrolled in the local school district;
 - (ii) the ages and grade levels of children served by the human services program estimated to be enrolled in the local school district;
 - (iii) the subjects or hours of the school day for which children served by the human services program are estimated to enroll in the local school district;
 - (iv) the direct contact information for the purposes of taking custody of a child served by the human services program during the school day in case of illness, disciplinary removal by a school, or emergency evacuation of a school; and
 - (v) the method or arrangements for the transportation of children served by the human services program to and from the school; and
- (b) the following information provided by the school district:
 - (i) enrollment procedures and forms;
 - (ii) documentation required prior to enrollment from each of the child's previous schools of enrollment;
 - (iii) if applicable, a schedule of the costs for tuition and school fees; and
 - (iv) schools and services for which a child served by the human services program may be eligible.

(4) Subject to Subsection (9) or (10), if a human services program serves any education entitled children whose custodial parents or legal guardians reside outside the state, then the program shall also provide an educational funding plan that includes evidence:

- (a) satisfactory to:
 - (i) the office; and
 - (ii)

- (A) the local school board of the school district in which the human services program will be operated; or
 - (B) the school district superintendent of the school district in which the human services program will be operated; and
 - (b) that all costs for educational services to be provided to the education entitled children, including tuition, and school fees approved by the local school board, shall be borne by the human services program.
- (5) Subject to Subsection (9) or (10), and in accordance with Subsection (2), the human services program shall obtain and provide the office with a letter:
- (a) from the entity referred to in Subsection (2)(a)(ii):
 - (i) approving the educational service plan referred to in Subsection (3); or
 - (ii)
 - (A) disapproving the educational service plan referred to in Subsection (3); and
 - (B) listing the specific requirements the human services program must meet before approval is granted; and
 - (b) from the entity referred to in Subsection (4)(a)(ii):
 - (i) approving the educational funding plan, referred to in Subsection (4); or
 - (ii)
 - (A) disapproving the educational funding plan, referred to in Subsection (4); and
 - (B) listing the specific requirements the human services program must meet before approval is granted.
- (6) Subject to Subsection (9), failure of a local school board or school district superintendent to respond to a proposed plan within 45 days of receipt of the plan is equivalent to approval of the plan by the local school board or school district superintendent if the human services program provides to the office:
- (a) proof that:
 - (i) the human services program submitted the proposed plan to the local school board or school district superintendent; and
 - (ii) more than 45 days have passed from the day on which the plan was submitted; and
 - (b) an affidavit, on a form produced by the office, stating:
 - (i) the date that the human services program submitted the proposed plan to the local school board or school district superintendent;
 - (ii) that more than 45 days have passed from the day on which the plan was submitted; and
 - (iii) that the local school board or school district superintendent described in Subsection (6)(b)
 - (i) failed to respond to the proposed plan within 45 days from the day on which the plan was submitted.
- (7) If a licensee that is licensed to serve an education entitled child fails to comply with the licensee's approved educational service plan or educational funding plan, then:
- (a) the office may give the licensee notice of intent to revoke the licensee's license; and
 - (b) if the licensee continues its noncompliance for more than 30 days after receipt of the notice described in Subsection (7)(a), the office may revoke the licensee's license.
- (8) If an education entitled child whose custodial parent or legal guardian resides within the state is provided with educational services by a school district other than the school district in which the custodial parent or legal guardian resides, then the funding provisions of Section 53G-6-405 apply.
- (9) A human services program that is an accredited private school:
- (a) for purposes of Subsection (3):

- (i) is only required to submit proof to the office that the accreditation of the private school is current; and
- (ii) is not required to submit an educational service plan for approval by an entity described in Subsection (2)(a)(ii);
- (b) for purposes of Subsection (4):
 - (i) is only required to submit proof to the office that all costs for educational services provided to education entitled children will be borne by the human services program; and
 - (ii) is not required to submit an educational funding plan for approval by an entity described in Subsection (4)(a)(ii); and
- (c) is not required to comply with Subsections (5) and (6).
- (10) Except for Subsection (8), the provisions of this section do not apply to a human services program that is a licensed or certified foster home.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-117 Licensing residential treatment programs and recovery residences -- Notification of local government.

- (1)
 - (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office shall make rules that establish categories of residential treatment and recovery residence licenses based on differences in the types of residential treatment programs and recovery residences.
 - (b) The categories referred to in Subsection (1)(a) may be based on differences in:
 - (i) services offered;
 - (ii) types of clients served;
 - (iii) risks posed to the community; or
 - (iv) other factors that make regulatory differences advisable.
- (2) Subject to the requirements of federal and state law, and pursuant to the authority granted by Section 26B-2-104, the office shall establish and enforce rules that:
 - (a) relate generally to all categories of residential treatment program and recovery residence licenses; and
 - (b) relate to specific categories of residential treatment program and recovery residence licenses on the basis of the regulatory needs, as determined by the office, of residential treatment programs and recovery residences within those specific categories.
- (3)
 - (a) Beginning July 1, 2014, the office shall charge an annual licensing fee, set by the office in accordance with the procedures described in Section 63J-1-504, to a recovery residence in an amount that will pay for the cost of the licensing and inspection requirements described in this section and in Section 26B-2-104.
 - (b) The office shall deposit the licensing fees described in this section in the General Fund as a dedicated credit to be used solely to pay for the cost of the licensing and inspection requirements described in this section and in Section 26B-2-104.
- (4) Before submitting an application for a license to operate a residential treatment program, the applicant shall serve notice of its intent to operate a residential treatment program on the governing body of:
 - (a) the city in which the residential treatment program will be located; or
 - (b) if the residential treatment program will be located in the unincorporated area of a county, the county in which the residential treatment program will be located.

- (5) The notice described in Subsection (4) shall include the following information relating to the residential treatment program:
- (a) an accurate description of the residential treatment program;
 - (b) the location where the residential treatment program will be operated;
 - (c) the services that will be provided by the residential treatment program;
 - (d) the type of clients that the residential treatment program will serve;
 - (e) the category of license for which the residential treatment program is applying to the office;
 - (f) the name, telephone number, and address of a person that may be contacted to make inquiries about the residential treatment program; and
 - (g) any other information that the office may require by rule.
- (6) When submitting an application for a license to operate a residential treatment program, the applicant shall include with the application:
- (a) a copy of the notice described in Subsection (4); and
 - (b) proof that the applicant served the notice described in Subsection (4) on the governing body described in Subsection (4).

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-118 Request by local government.

- (1) A local government may request that the office notify the local government of new human services program license applications for human services programs located within the local government's jurisdiction.
- (2) Subsection (1) does not apply to foster homes.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-119 Residential support program -- Temporary homeless youth shelter.

In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office shall make rules that establish age-appropriate and gender-appropriate sleeping quarters in temporary homeless youth shelters, as defined in Section 80-5-102, that provide overnight shelter to minors.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-120 Background check -- Direct access to children or vulnerable adults.

- (1) As used in this section:
- (a)
 - (i) "Applicant" means, notwithstanding Section 26B-2-101:
 - (A) an individual who applies for an initial license or certification or a license or certification renewal under this part;
 - (B) an individual who is associated with a licensee and has or will likely have direct access to a child or a vulnerable adult;
 - (C) an individual who provides respite care to a foster parent or an adoptive parent on more than one occasion;
 - (D) a department contractor;
 - (E) an individual who transports a child for a youth transportation company;
 - (F) a guardian submitting an application on behalf of an individual, other than the child or vulnerable adult who is receiving the service, if the individual is 12 years old or older and resides in a home, that is licensed or certified by the office; or

- (G) a guardian submitting an application on behalf of an individual, other than the child or vulnerable adult who is receiving the service, if the individual is 12 years old or older and is a person described in Subsection (1)(a)(i)(A), (B), (C), or (D).
- (ii) "Applicant" does not include:
 - (A) an individual who is in the custody of the Division of Child and Family Services or the Division of Juvenile Justice Services; or
 - (B) an individual who applies for employment with, or is employed by, the Department of Health and Human Services.
- (b) "Application" means a background screening application to the office.
- (c) "Bureau" means the Bureau of Criminal Identification within the Department of Public Safety, created in Section 53-10-201.
- (d) "Certified peer support specialist" means the same as that term is defined in Section 26B-5-610.
- (e) "Criminal finding" means a record of:
 - (i) an arrest or a warrant for an arrest;
 - (ii) charges for a criminal offense; or
 - (iii) a criminal conviction.
- (f) "Incidental care" means occasional care, not in excess of five hours per week and never overnight, for a foster child.
- (g) "Mental health professional" means an individual who:
 - (i) is licensed under Title 58, Chapter 60, Mental Health Professional Practice Act; and
 - (ii) engaged in the practice of mental health therapy.
- (h) "Non-criminal finding" means a record maintained in:
 - (i) the Division of Child and Family Services' Management Information System described in Section 80-2-1001;
 - (ii) the Division of Child and Family Services' Licensing Information System described in Section 80-2-1002;
 - (iii) the Division of Aging and Adult Services' vulnerable adult abuse, neglect, or exploitation database described in Section 26B-6-210;
 - (iv) the Sex and Kidnap Offender Registry described in Title 77, Chapter 41, Sex and Kidnap Offender Registry, or a national sex offender registry; or
 - (v) a state child abuse or neglect registry.
- (i)
 - (i) "Peer support specialist" means an individual who:
 - (A) has a disability or a family member with a disability, or is in recovery from a mental illness or a substance use disorder; and
 - (B) uses personal experience to provide support, guidance, or services to promote resiliency and recovery.
 - (ii) "Peer support specialist" includes a certified peer support specialist.
 - (iii) "Peer support specialist" does not include a mental health professional.
- (j) "Personal identifying information" means:
 - (i) current name, former names, nicknames, and aliases;
 - (ii) date of birth;
 - (iii) physical address and email address;
 - (iv) telephone number;
 - (v) driver license or other government-issued identification;
 - (vi) social security number;

- (vii) only for applicants who are 18 years old or older, fingerprints, in a form specified by the office; and
 - (viii) other information specified by the office by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
 - (k) "Practice of mental health therapy" means the same as that term is defined in Section 58-60-102.
- (2) Except as provided in Subsection (12), an applicant or a representative shall submit the following to the office:
- (a) personal identifying information;
 - (b) a fee established by the office under Section 63J-1-504; and
 - (c) a disclosure form, specified by the office, for consent for:
 - (i) an initial background check upon submission of the information described in this Subsection (2);
 - (ii) ongoing monitoring of fingerprints and registries until no longer associated with a licensee for 90 days;
 - (iii) a background check when the office determines that reasonable cause exists; and
 - (iv) retention of personal identifying information, including fingerprints, for monitoring and notification as described in Subsections (3)(d) and (4); and
 - (d) if an applicant resided outside of the United States and its territories during the five years immediately preceding the day on which the information described in Subsections (2)(a) through (c) is submitted to the office, documentation establishing whether the applicant was convicted of a crime during the time that the applicant resided outside of the United States or its territories.
- (3) The office:
- (a) shall perform the following duties as part of a background check of an applicant:
 - (i) check state and regional criminal background databases for the applicant's criminal history by:
 - (A) submitting personal identifying information to the bureau for a search; or
 - (B) using the applicant's personal identifying information to search state and regional criminal background databases as authorized under Section 53-10-108;
 - (ii) submit the applicant's personal identifying information and fingerprints to the bureau for a criminal history search of applicable national criminal background databases;
 - (iii) search the Division of Child and Family Services' Licensing Information System described in Section 80-2-1002;
 - (iv) if the applicant is applying to become a prospective foster or adoptive parent, search the Division of Child and Family Services' Management Information System described in Section 80-2-1001 for:
 - (A) the applicant; and
 - (B) any adult living in the applicant's home;
 - (v) for an applicant described in Subsection (1)(a)(i)(F), search the Division of Child and Family Services' Management Information System described in Section 80-2-1001;
 - (vi) search the Division of Aging and Adult Services' vulnerable adult abuse, neglect, or exploitation database described in Section 26B-6-210;
 - (vii) search the juvenile court records for substantiated findings of severe child abuse or neglect described in Section 80-3-404; and
 - (viii) search the juvenile court arrest, adjudication, and disposition records, as provided under Section 78A-6-209;

- (b) shall conduct a background check of an applicant for an initial background check upon submission of the information described in Subsection (2);
 - (c) may conduct all or portions of a background check of an applicant, as provided by rule, made by the office in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:
 - (i) for an annual renewal; or
 - (ii) when the office determines that reasonable cause exists;
 - (d) may submit an applicant's personal identifying information, including fingerprints, to the bureau for checking, retaining, and monitoring of state and national criminal background databases and for notifying the office of new criminal activity associated with the applicant;
 - (e) shall track the status of an applicant under this section to ensure that the applicant is not required to duplicate the submission of the applicant's fingerprints if the applicant applies for:
 - (i) more than one license;
 - (ii) direct access to a child or a vulnerable adult in more than one human services program; or
 - (iii) direct access to a child or a vulnerable adult under a contract with the department;
 - (f) shall track the status of each individual with direct access to a child or a vulnerable adult and notify the bureau within 90 days after the day on which the license expires or the individual's direct access to a child or a vulnerable adult ceases;
 - (g) shall adopt measures to strictly limit access to personal identifying information solely to the individuals responsible for processing and entering the applications for background checks and to protect the security of the personal identifying information the office reviews under this Subsection (3);
 - (h) as necessary to comply with the federal requirement to check a state's child abuse and neglect registry regarding any individual working in a congregate care program, shall:
 - (i) search the Division of Child and Family Services' Licensing Information System described in Section 80-2-1002; and
 - (ii) require the child abuse and neglect registry be checked in each state where an applicant resided at any time during the five years immediately preceding the day on which the applicant submits the information described in Subsection (2) to the office; and
 - (i) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement the provisions of this Subsection (3) relating to background checks.
- (4)
- (a) With the personal identifying information the office submits to the bureau under Subsection (3), the bureau shall check against state and regional criminal background databases for the applicant's criminal history.
 - (b) With the personal identifying information and fingerprints the office submits to the bureau under Subsection (3), the bureau shall check against national criminal background databases for the applicant's criminal history.
 - (c) Upon direction from the office, and with the personal identifying information and fingerprints the office submits to the bureau under Subsection (3)(d), the bureau shall:
 - (i) maintain a separate file of the fingerprints for search by future submissions to the local and regional criminal records databases, including latent prints; and
 - (ii) monitor state and regional criminal background databases and identify criminal activity associated with the applicant.
 - (d) The bureau is authorized to submit the fingerprints to the Federal Bureau of Investigation Next Generation Identification System, to be retained in the Federal Bureau of Investigation Next Generation Identification System for the purpose of:

- (i) being searched by future submissions to the national criminal records databases, including the Federal Bureau of Investigation Next Generation Identification System and latent prints; and
 - (ii) monitoring national criminal background databases and identifying criminal activity associated with the applicant.
 - (e) The Bureau shall notify and release to the office all information of criminal activity associated with the applicant.
 - (f) Upon notice that an individual's direct access to a child or a vulnerable adult has ceased for 90 days, the bureau shall:
 - (i) discard and destroy any retained fingerprints; and
 - (ii) notify the Federal Bureau of Investigation when the license has expired or an individual's direct access to a child or a vulnerable adult has ceased, so that the Federal Bureau of Investigation will discard and destroy the retained fingerprints from the Federal Bureau of Investigation Next Generation Identification System.
- (5)
- (a) Except as provided in Subsection (5)(b), after conducting the background check described in Subsections (3) and (4), the office shall deny an application to an applicant who, within three years before the day on which the applicant submits information to the office under Subsection (2) for a background check, has been convicted of:
 - (i) a felony or misdemeanor involving conduct that constitutes any of the following:
 - (A) an offense identified as domestic violence, lewdness, voyeurism, battery, cruelty to animals, or bestiality;
 - (B) a violation of any pornography law, including sexual exploitation of a minor or aggravated sexual exploitation of a minor;
 - (C) sexual solicitation;
 - (D) an offense included in Title 76, Chapter 5, Offenses Against the Individual, Title 76, Chapter 5b, Sexual Exploitation Act, Title 76, Chapter 4, Part 4, Enticement of a Minor, or Title 76, Chapter 7, Offenses Against the Family;
 - (E) aggravated arson, as described in Section 76-6-103;
 - (F) aggravated burglary, as described in Section 76-6-203;
 - (G) aggravated robbery, as described in Section 76-6-302;
 - (H) identity fraud crime, as described in Section 76-6-1102;
 - (I) sexual battery, as described in Section 76-9-702.1; or
 - (J) a violent offense committed in the presence of a child, as described in Section 76-3-203.10; or
 - (ii) a felony or misdemeanor offense committed outside of the state that, if committed in the state, would constitute a violation of an offense described in Subsection (5)(a)(i).
 - (b)
 - (i) Subsection (5)(a) does not apply to an applicant who is seeking a position as a peer support provider, a mental health professional, or in a program that serves only adults with a primary mental health diagnosis, with or without a co-occurring substance use disorder.
 - (ii) The office shall conduct a comprehensive review of an applicant described in Subsection (5)(b)(i) in accordance with Subsection (6).
- (6) The office shall conduct a comprehensive review of an applicant's background check if the applicant:
- (a) has a felony or class A misdemeanor conviction for an offense described in Subsection (5) with a date of conviction that is more than three years before the date on which the applicant submits the information described in Subsection (2);

- (b) has a felony charge or conviction for an offense not described in Subsection (5) with a date of charge or conviction that is no more than 10 years before the date on which the applicant submits the application under Subsection (2) and no criminal findings or non-criminal findings after the date of conviction;
- (c) has a class B misdemeanor or class C misdemeanor conviction for an offense described in Subsection (5) with a date of conviction that is more than three years after, and no more than 10 years before, the date on which the applicant submits the information described in Subsection (2) and no criminal findings or non-criminal findings after the date of conviction;
- (d) has a misdemeanor conviction for an offense not described in Subsection (5) with a date of conviction that is no more than three years before the date on which the applicant submits information described in Subsection (2) and no criminal findings or non-criminal findings after the date of conviction;
- (e) is currently subject to a plea in abeyance or diversion agreement for an offense described in Subsection (5);
- (f) appears on the Sex and Kidnap Offender Registry described in Title 77, Chapter 41, Sex and Kidnap Offender Registry, or a national sex offender registry;
- (g) has a record of an adjudication in juvenile court for an act that, if committed by an adult, would be a felony or misdemeanor, if the applicant is:
 - (i) under 28 years old; or
 - (ii) 28 years old or older and has been convicted of, has pleaded no contest to, or is currently subject to a plea in abeyance or diversion agreement for a felony or a misdemeanor offense described in Subsection (5);
- (h) has a pending charge for an offense described in Subsection (5);
- (i) has a listing in the Division of Child and Family Services' Licensing Information System described in Section 80-2-1002 that occurred no more than 15 years before the date on which the applicant submits the information described in Subsection (2) and no criminal findings or non-criminal findings dated after the date of the listing;
- (j) has a listing in the Division of Aging and Adult Services' vulnerable adult abuse, neglect, or exploitation database described in Section 26B-6-210 that occurred no more than 15 years before the date on which the applicant submits the information described in Subsection (2) and no criminal findings or non-criminal findings dated after the date of the listing;
- (k) has a substantiated finding of severe child abuse or neglect under Section 80-3-404 or 80-3-504 that occurred no more than 15 years before the date on which the applicant submits the information described in Subsection (2) and no criminal findings or non-criminal findings dated after the date of the finding;
- (l)
 - (i) is seeking a position:
 - (A) as a peer support provider;
 - (B) as a mental health professional; or
 - (C) in a program that serves only adults with a primary mental health diagnosis, with or without a co-occurring substance use disorder; and
 - (ii) within three years before the day on which the applicant submits the information described in Subsection (2):
 - (A) has a felony or misdemeanor charge or conviction;
 - (B) has a listing in the Division of Child and Family Services' Licensing Information System described in Section 80-2-1002;
 - (C) has a listing in the Division of Aging and Adult Services' vulnerable adult abuse, neglect, or exploitation database described in Section 26B-6-210; or

- (D) has a substantiated finding of severe child abuse or neglect under Section 80-3-404 or 80-3-504;
 - (m)
 - (i)
 - (A) is seeking a position in a congregate care program;
 - (B) is seeking to become a prospective foster or adoptive parent; or
 - (C) is an applicant described in Subsection (1)(a)(i)(F); and
 - (ii)
 - (A) has an infraction conviction for conduct that constitutes an offense or violation described in Subsection (5)(a)(i)(A) or (B);
 - (B) has a listing in the Division of Child and Family Services' Licensing Information System described in Section 80-2-1002;
 - (C) has a listing in the Division of Aging and Adult Services' vulnerable adult abuse, neglect, or exploitation database described in Section 26B-6-210;
 - (D) has a substantiated finding of severe child abuse or neglect under Section 80-3-404 or 80-3-504; or
 - (E) has a listing on the registry check described in Subsection (13)(a) as having a substantiated or supported finding of a severe type of child abuse or neglect as defined in Section 80-1-102; or
 - (n) is seeking to become a prospective foster or adoptive parent and has, or has an adult living with the applicant who has, a conviction, finding, or listing described in Subsection (6)(m)(ii).
- (7)
- (a) The comprehensive review shall include an examination of:
 - (i) the date of the offense or incident;
 - (ii) the nature and seriousness of the offense or incident;
 - (iii) the circumstances under which the offense or incident occurred;
 - (iv) the age of the perpetrator when the offense or incident occurred;
 - (v) whether the offense or incident was an isolated or repeated incident;
 - (vi) whether the offense or incident directly relates to abuse of a child or vulnerable adult, including:
 - (A) actual or threatened, nonaccidental physical, mental, or financial harm;
 - (B) sexual abuse;
 - (C) sexual exploitation; or
 - (D) negligent treatment;
 - (vii) any evidence provided by the applicant of rehabilitation, counseling, psychiatric treatment received, or additional academic or vocational schooling completed; and
 - (viii) the applicant's risk of harm to clientele in the program or in the capacity for which the applicant is applying.
 - (b) At the conclusion of the comprehensive review, the office shall deny an application to an applicant if the office finds:
 - (i) that approval would likely create a risk of harm to a child or a vulnerable adult; or
 - (ii) an individual is prohibited from having direct access to a child or vulnerable adult by court order.
- (8) The office shall approve an application to an applicant who is not denied under this section.
- (9)
- (a) The office may conditionally approve an application of an applicant, for a maximum of 60 days after the day on which the office sends written notice to the applicant under Subsection (11), without requiring that the applicant be directly supervised, if the office:

- (i) is awaiting the results of the criminal history search of national criminal background databases; and
 - (ii) would otherwise approve an application of the applicant under this section.
 - (b) The office may conditionally approve an application of an applicant, for a maximum of one year after the day on which the office sends written notice to the applicant under Subsection (11), without requiring that the applicant be directly supervised if the office:
 - (i) is awaiting the results of an out-of-state registry for providers other than foster and adoptive parents; and
 - (ii) would otherwise approve an application of the applicant under this section.
 - (c) Upon receiving the results of the criminal history search of a national criminal background database, the office shall approve or deny the application of the applicant in accordance with this section.
- (10)
- (a) A licensee or department contractor may not permit an individual to have direct access to a child or a vulnerable adult without being directly supervised unless:
 - (i) the individual is associated with the licensee or department contractor and the department conducts a background screening in accordance with this section;
 - (ii) the individual is the parent or guardian of the child, or the guardian of the vulnerable adult;
 - (iii) the individual is approved by the parent or guardian of the child, or the guardian of the vulnerable adult, to have direct access to the child or the vulnerable adult;
 - (iv) the individual is only permitted to have direct access to a vulnerable adult who voluntarily invites the individual to visit; or
 - (v) the individual only provides incidental care for a foster child on behalf of a foster parent who has used reasonable and prudent judgment to select the individual to provide the incidental care for the foster child.
 - (b) Notwithstanding any other provision of this section, an individual for whom the office denies an application may not have direct access to a child or vulnerable adult unless the office approves a subsequent application by the individual.
- (11)
- (a) Within 30 days after the day on which the applicant submits the information described in Subsection (2), the office shall notify the applicant of any potentially disqualifying criminal findings or non-criminal findings.
 - (b) If the notice under Subsection (11)(a) states that the applicant's application is denied, the notice shall further advise the applicant that the applicant may, under Subsection 26B-2-111(2), request a hearing in the department's Office of Administrative Hearings, to challenge the office's decision.
 - (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office shall make rules, consistent with this part:
 - (i) defining procedures for the challenge of the office's background check decision described in Subsection (11)(b); and
 - (ii) expediting the process for renewal of a license under the requirements of this section and other applicable sections.
- (12)
- (a) An individual or a department contractor who provides services in an adults only substance use disorder program, as defined by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, is exempt from this section.
 - (b) The exemption described in Subsection (12)(a) does not extend to a program director or a member, as defined by Section 26B-2-105, of the program.

(13)

- (a) Except as provided in Subsection (13)(b), in addition to the other requirements of this section, if the background check of an applicant is being conducted for the purpose of giving clearance status to an applicant seeking a position in a congregate care program or an applicant seeking to become a prospective foster or adoptive parent, the office shall:
 - (i) check the child abuse and neglect registry in each state where each applicant resided in the five years immediately preceding the day on which the applicant applied to be a foster or adoptive parent, to determine whether the prospective foster or adoptive parent is listed in the registry as having a substantiated or supported finding of child abuse or neglect; and
 - (ii) check the child abuse and neglect registry in each state where each adult living in the home of the applicant described in Subsection (13)(a)(i) resided in the five years immediately preceding the day on which the applicant applied to be a foster or adoptive parent, to determine whether the adult is listed in the registry as having a substantiated or supported finding of child abuse or neglect.
- (b) The requirements described in Subsection (13)(a) do not apply to the extent that:
 - (i) federal law or rule permits otherwise; or
 - (ii) the requirements would prohibit the Division of Child and Family Services or a court from placing a child with:
 - (A) a noncustodial parent under Section 80-2a-301, 80-3-302, or 80-3-303; or
 - (B) a relative, other than a noncustodial parent, under Section 80-2a-301, 80-3-302, or 80-3-303, pending completion of the background check described in Subsection (5).
- (c) Notwithstanding Subsections (5) through (10), the office shall deny a clearance to an applicant seeking a position in a congregate care program or an applicant to become a prospective foster or adoptive parent if the applicant has been convicted of:
 - (i) a felony involving conduct that constitutes any of the following:
 - (A) child abuse, as described in Sections 76-5-109, 76-5-109.2, and 76-5-109.3;
 - (B) commission of domestic violence in the presence of a child, as described in Section 76-5-114;
 - (C) abuse or neglect of a child with a disability, as described in Section 76-5-110;
 - (D) endangerment of a child or vulnerable adult, as described in Section 76-5-112.5;
 - (E) aggravated murder, as described in Section 76-5-202;
 - (F) murder, as described in Section 76-5-203;
 - (G) manslaughter, as described in Section 76-5-205;
 - (H) child abuse homicide, as described in Section 76-5-208;
 - (I) homicide by assault, as described in Section 76-5-209;
 - (J) kidnapping, as described in Section 76-5-301;
 - (K) child kidnapping, as described in Section 76-5-301.1;
 - (L) aggravated kidnapping, as described in Section 76-5-302;
 - (M) human trafficking of a child, as described in Section 76-5-308.5;
 - (N) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;
 - (O) sexual exploitation of a minor, as described in Title 76, Chapter 5b, Sexual Exploitation Act;
 - (P) aggravated exploitation of a minor, as described in Section 76-5b-201.1;
 - (Q) aggravated arson, as described in Section 76-6-103;
 - (R) aggravated burglary, as described in Section 76-6-203;
 - (S) aggravated robbery, as described in Section 76-6-302;
 - (T) lewdness involving a child, as described in Section 76-9-702.5;
 - (U) incest, as described in Section 76-7-102; or

- (V) domestic violence, as described in Section 77-36-1; or
- (ii) an offense committed outside the state that, if committed in the state, would constitute a violation of an offense described in Subsection (13)(c)(i).
- (d) Notwithstanding Subsections (5) through (10), the office shall deny a license or license renewal to an individual seeking a position in a congregate care program or a prospective foster or adoptive parent if, within the five years immediately preceding the day on which the individual's application or license would otherwise be approved, the individual was convicted of a felony involving conduct that constitutes a violation of any of the following:
 - (i) aggravated assault, as described in Section 76-5-103;
 - (ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;
 - (iii) mayhem, as described in Section 76-5-105;
 - (iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;
 - (v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
 - (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances Act;
 - (vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance Precursor Act; or
 - (viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.
- (e) In addition to the circumstances described in Subsection (6), the office shall conduct the comprehensive review of an applicant's background check under this section if the registry check described in Subsection (13)(a) indicates that the individual is listed in a child abuse and neglect registry of another state as having a substantiated or supported finding of a severe type of child abuse or neglect as defined in Section 80-1-102.
- (14) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office may make rules, consistent with this part, to:
 - (a) establish procedures for, and information to be examined in, the comprehensive review described in Subsections (6) and (7); and
 - (b) determine whether to consider an offense or incident that occurred while an individual was in the custody of the Division of Child and Family Services or the Division of Juvenile Justice Services for purposes of approval or denial of an application for a prospective foster or adoptive parent.

Renumbered and Amended by Chapter 305, 2023 General Session
Amended by Chapter 344, 2023 General Session

26B-2-121 Access to abuse and neglect information.

- (1) As used in this section:
 - (a) "Direct service worker" means the same as that term is defined in Section 26B-6-401.
 - (b) "Personal care attendant" means the same as that term is defined in Section 26B-6-401.
- (2) With respect to a licensee, a direct service worker, or a personal care attendant, the department may access only the Licensing Information System of the Division of Child and Family Services created by Section 80-2-1002 and juvenile court records under Subsection 80-3-404(4), for the purpose of:
 - (a)
 - (i) determining whether a person associated with a licensee, with direct access to children:
 - (A) is listed in the Licensing Information System; or
 - (B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under Subsections 80-3-404(1) and (2); and
 - (ii) informing a licensee that a person associated with the licensee:
 - (A) is listed in the Licensing Information System; or

- (B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under Subsections 80-3-404(1) and (2);
- (b)
 - (i) determining whether a direct service worker:
 - (A) is listed in the Licensing Information System; or
 - (B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under Subsections 80-3-404(1) and (2); and
 - (ii) informing a direct service worker or the direct service worker's employer that the direct service worker:
 - (A) is listed in the Licensing Information System; or
 - (B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under Subsections 80-3-404(1) and (2); or
- (c)
 - (i) determining whether a personal care attendant:
 - (A) is listed in the Licensing Information System; or
 - (B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under Subsections 80-3-404(1) and (2); and
 - (ii) informing a person described in Subsections 26B-6-101(9)(a)(i) through (iv) that a personal care attendant:
 - (A) is listed in the Licensing Information System; or
 - (B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under Subsections 80-3-404(1) and (2).
- (3) Notwithstanding Subsection (2), the department may access the Division of Child and Family Services' Management Information System under Section 80-2-1001:
 - (a) for the purpose of licensing and monitoring foster parents;
 - (b) for the purposes described in Subsection 80-2-1001(5)(b)(iii); and
 - (c) for the purpose described in Section 26B-1-211.
- (4) The department shall receive and process personal identifying information under Subsection 26B-2-120(1) for the purposes described in Subsection (2).
- (5) The department shall adopt rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, consistent with this part, defining the circumstances under which a person may have direct access or provide services to children when:
 - (a) the person is listed in the Licensing Information System of the Division of Child and Family Services created by Section 80-2-1002; or
 - (b) juvenile court records show that a court made a substantiated finding under Section 80-3-404, that the person committed a severe type of child abuse or neglect.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-122 Access to vulnerable adult abuse and neglect information.

- (1) For purposes of this section:
 - (a) "Direct service worker" means the same as that term is defined in Section 26B-6-401.
 - (b) "Personal care attendant" means the same as that term is defined in Section 26B-6-401.
- (2) With respect to a licensee, a direct service worker, or a personal care attendant, the department may access the database created by Section 26B-6-210 for the purpose of:
 - (a)
 - (i) determining whether a person associated with a licensee, with direct access to vulnerable adults, has a supported or substantiated finding of:

- (A) abuse;
- (B) neglect; or
- (C) exploitation; and
- (ii) informing a licensee that a person associated with the licensee has a supported or substantiated finding of:
 - (A) abuse;
 - (B) neglect; or
 - (C) exploitation;
- (b)
 - (i) determining whether a direct service worker has a supported or substantiated finding of:
 - (A) abuse;
 - (B) neglect; or
 - (C) exploitation; and
 - (ii) informing a direct service worker or the direct service worker's employer that the direct service worker has a supported or substantiated finding of:
 - (A) abuse;
 - (B) neglect; or
 - (C) exploitation; or
- (c)
 - (i) determining whether a personal care attendant has a supported or substantiated finding of:
 - (A) abuse;
 - (B) neglect; or
 - (C) exploitation; and
 - (ii) informing a person described in Subsections 26B-6-401(9)(a)(i) through (iv) that a personal care attendant has a supported or substantiated finding of:
 - (A) abuse;
 - (B) neglect; or
 - (C) exploitation.
- (3) The department shall receive and process personal identifying information under Subsection 26B-2-120(1) for the purposes described in Subsection (2).
- (4) The department shall adopt rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, consistent with this part and Chapter 6, Part 2, Abuse, Neglect, or Exploitation of a Vulnerable Adult, defining the circumstances under which a person may have direct access or provide services to vulnerable adults when the person is listed in the statewide database of the Division of Aging and Adult Services created by Section 26B-6-210 as having a supported or substantiated finding of abuse, neglect, or exploitation.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-123 Congregate care program regulation.

- (1) A congregate care program may not use a cruel, severe, unusual, or unnecessary practice on a child, including:
 - (a) a strip search unless the congregate care program determines and documents that a strip search is necessary to protect an individual's health or safety;
 - (b) a body cavity search unless the congregate care program determines and documents that a body cavity search is necessary to protect an individual's health or safety;
 - (c) inducing pain to obtain compliance;
 - (d) hyperextending joints;

- (e) peer restraints;
 - (f) discipline or punishment that is intended to frighten or humiliate;
 - (g) requiring or forcing the child to take an uncomfortable position, including squatting or bending;
 - (h) for the purpose of punishing or humiliating, requiring or forcing the child to repeat physical movements or physical exercises such as running laps or performing push-ups;
 - (i) spanking, hitting, shaking, or otherwise engaging in aggressive physical contact;
 - (j) denying an essential program service;
 - (k) depriving the child of a meal, water, rest, or opportunity for toileting;
 - (l) denying shelter, clothing, or bedding;
 - (m) withholding personal interaction, emotional response, or stimulation;
 - (n) prohibiting the child from entering the residence;
 - (o) abuse as defined in Section 80-1-102; and
 - (p) neglect as defined in Section 80-1-102.
- (2) Before a congregate care program may use a restraint or seclusion, the congregate care program shall:
- (a) develop and implement written policies and procedures that:
 - (i) describe the circumstances under which a staff member may use a restraint or seclusion;
 - (ii) describe which staff members are authorized to use a restraint or seclusion;
 - (iii) describe procedures for monitoring a child that is restrained or in seclusion;
 - (iv) describe time limitations on the use of a restraint or seclusion;
 - (v) require immediate and continuous review of the decision to use a restraint or seclusion;
 - (vi) require documenting the use of a restraint or seclusion;
 - (vii) describe record keeping requirements for records related to the use of a restraint or seclusion;
 - (viii) to the extent practicable, require debriefing the following individuals if debriefing would not interfere with an ongoing investigation, violate any law or regulation, or conflict with a child's treatment plan:
 - (A) each witness to the event;
 - (B) each staff member involved; and
 - (C) the child who was restrained or in seclusion;
 - (ix) include a procedure for complying with Subsection (5); and
 - (x) provide an administrative review process and required follow up actions after a child is restrained or put in seclusion; and
 - (b) consult with the office to ensure that the congregate care program's written policies and procedures align with applicable law.
- (3) A congregate care program:
- (a) may use a passive physical restraint only if the passive physical restraint is supported by a nationally or regionally recognized curriculum focused on non-violent interventions and de-escalation techniques;
 - (b) may not use a chemical or mechanical restraint unless the office has authorized the congregate care program to use a chemical or mechanical restraint;
 - (c) shall ensure that a staff member that uses a restraint on a child is:
 - (i) properly trained to use the restraint; and
 - (ii) familiar with the child and if the child has a treatment plan, the child's treatment plan; and
 - (d) shall train each staff member on how to intervene if another staff member fails to follow correct procedures when using a restraint.
- (4)
- (a) A congregate care program:

- (i) may use seclusion if:
 - (A) the purpose for the seclusion is to ensure the immediate safety of the child or others; and
 - (B) no less restrictive intervention is likely to ensure the safety of the child or others; and
 - (ii) may not use seclusion:
 - (A) for coercion, retaliation, or humiliation; or
 - (B) due to inadequate staffing or for the staff's convenience.
 - (b) While a child is in seclusion, a staff member who is familiar to the child shall actively supervise the child for the duration of the seclusion.
- (5) Subject to the office's review and approval, a congregate care program shall develop:
- (a) suicide prevention policies and procedures that describe:
 - (i) how the congregate care program will respond in the event a child exhibits self-injurious, self-harm, or suicidal behavior;
 - (ii) warning signs of suicide;
 - (iii) emergency protocol and contacts;
 - (iv) training requirements for staff, including suicide prevention training;
 - (v) procedures for implementing additional supervision precautions and for removing any additional supervision precautions;
 - (vi) suicide risk assessment procedures;
 - (vii) documentation requirements for a child's suicide ideation and self-harm;
 - (viii) special observation precautions for a child exhibiting warning signs of suicide;
 - (ix) communication procedures to ensure all staff are aware of a child who exhibits warning signs of suicide;
 - (x) a process for tracking suicide behavioral patterns; and
 - (xi) a post-intervention plan with identified resources; and
 - (b) based on state law and industry best practices, policies and procedures for managing a child's behavior during the child's participation in the congregate care program.
- (6)
- (a) A congregate care program:
 - (i) subject to Subsection (6)(b), shall facilitate weekly confidential voice-to-voice communication between a child and the child's parents, guardian, foster parents, and siblings, as applicable;
 - (ii) shall ensure that the communication described in Subsection (6)(a)(i) complies with the child's treatment plan, if any; and
 - (iii) may not use family contact as an incentive for proper behavior or withhold family contact as a punishment.
 - (b) For the communication described in Subsection (6)(a)(i), a congregate care program may not:
 - (i) deny the communication unless state law or a court order prohibits the communication; or
 - (ii) modify the frequency or form of the communication unless:
 - (A) the office approves the modification; or
 - (B) state law or a court order prohibits the frequency or the form of the communication.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-124 Congregate care program requirements.

- (1) As used in this section, "disruption plan" means a child specific plan used:
 - (a) when the private-placement child stops receiving services from a congregate care program; and

- (b) for transporting a private-placement child to a parent or guardian or to another congregate care program.
- (2) A congregate care program shall keep the following for a private-placement child whose parent or guardian lives outside the state:
 - (a) regularly updated contact information for the parent or guardian that lives outside the state; and
 - (b) a disruption plan.
- (3) If a private-placement child whose parent or guardian resides outside the state leaves a congregate care program without following the child's disruption plan, the congregate care program shall:
 - (a) notify the parent or guardian, office, and local law enforcement authorities;
 - (b) assist the state in locating the private-placement child; and
 - (c) after the child is located, transport the private-placement child:
 - (i) to a parent or guardian;
 - (ii) back to the congregate care program; or
 - (iii) to another congregate care program.
- (4) This section does not apply to a guardian that is a state or agency.
- (5) The office shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, describing:
 - (a) additional mandatory provisions for a disruption plan; and
 - (b) how a congregate care program shall notify the office when a private-placement child begins receiving services.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-125 Youth transportation company registration.

- (1) The office shall establish a registration system for youth transportation companies.
- (2) The office shall establish a fee:
 - (a) under Section 63J-1-504 that does not exceed \$500; and
 - (b) that when paid by all registrants generates sufficient revenue to cover or substantially cover the costs for the creation and maintenance of the registration system.
- (3) A youth transportation company shall:
 - (a) register with the office; and
 - (b) provide the office:
 - (i) proof of a business insurance policy that provides at least \$1,000,000 in coverage; and
 - (ii) a valid business license from the state where the youth transportation company is headquartered.
- (4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office shall make rules to implement this section.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-126 Notification requirement for child-placing agencies that provide foster home services -- Rulemaking authority.

- (1) The office shall require a child-placing agency that provides foster home services to notify a foster parent that if the foster parent signs as the responsible adult for a foster child to receive a driver license under Section 53-3-211:

- (a) the foster parent is jointly and severally liable with the minor for civil compensatory damages caused by the minor when operating a motor vehicle upon a highway as provided under Subsections 53-3-211(2) and (4); and
 - (b) the foster parent may file with the Driver License Division a verified written request that the learner permit or driver license be canceled in accordance with Section 53-3-211 if the foster child no longer resides with the foster parent.
- (2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office may make rules establishing the procedures for a child-placing agency to provide the notification required under this section.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-127 Child placing licensure requirements -- Prohibited acts -- Consortium.

(1) As used in this section:

- (a)
 - (i) "Advertisement" means any written, oral, or graphic statement or representation made in connection with a solicitation of business.
 - (ii) "Advertisement" includes a statement or representation described in Subsection (1)(a)(i) by a noncable television system, radio, printed brochure, newspaper, leaflet, flyer, circular, billboard, banner, Internet website, social media, or sign.
 - (b) "Birth parent" means the same as that term is defined in Section 78B-6-103.
 - (c) "Clearly and conspicuously disclose" means the same as that term is defined in Section 13-11a-2.
 - (d)
 - (i) "Matching advertisement" means any written, oral, or graphic statement or representation made in connection with a solicitation of business to provide the assistance described in Subsection (3)(a)(i), regardless of whether there is or will be an exchange described in Subsection (3)(a)(ii).
 - (ii) "Matching advertisement" includes a statement or representation described in Subsection (1)(d)(i) by a noncable television system, radio, printed brochure, newspaper, leaflet, flyer, circular, billboard, banner, Internet website, social media, or sign.
- (2)
- (a) Subject to Section 78B-24-205, a person may not engage in child placing, or solicit money or other assistance for child placing, without a valid license issued by the office in accordance with this part.
 - (b) If a child-placing agency's license is suspended or revoked in accordance with this part, the care, control, or custody of any child who is in the care, control, or custody of the child-placing agency shall be transferred to the Division of Child and Family Services.
- (3)
- (a)
 - (i) An attorney, physician, or other person may assist:
 - (A) a birth parent to identify or locate a prospective adoptive parent who is interested in adopting the birth parent's child; or
 - (B) a prospective adoptive parent to identify or locate a child to be adopted.
 - (ii) A payment, charge, fee, reimbursement of expense, or exchange of value of any kind, or promise or agreement to make the same, may not be made for the assistance described in Subsection (3)(a)(i).
 - (b) An attorney, physician, or other person may not:

- (i) issue or cause to be issued to any person a card, sign, or device indicating that the attorney, physician, or other person is available to provide the assistance described in Subsection (3)(a)(i);
- (ii) cause, permit, or allow any sign or marking indicating that the attorney, physician, or other person is available to provide the assistance described in Subsection (3)(a)(i), on or in any building or structure;
- (iii) announce, cause, permit, or allow an announcement indicating that the attorney, physician, or other person is available to provide the assistance described in Subsection (3)(a)(i), to appear in any newspaper, magazine, directory, on radio or television, or an Internet website relating to a business;
- (iv) announce, cause, permit, or allow a matching advertisement; or
- (v) announce, cause, permit, or allow an advertisement that indicates or implies the attorney, physician, or other person is available to provide the assistance described in Subsection (3)(a)(i) as part of, or related to, other adoption-related services by using any of the following terms:
 - (A) "comprehensive";
 - (B) "complete";
 - (C) "one-stop";
 - (D) "all-inclusive"; or
 - (E) any other term similar to the terms described in Subsections (3)(b)(v)(A) through (D).
- (c) An attorney, physician, or other person who is not licensed by the office shall clearly and conspicuously disclose in any print media advertisement or written contract regarding adoption services or adoption-related services that the attorney, physician, or other person is not licensed to provide adoption services by the office.
- (4) A person who intentionally or knowingly violates Subsection (2) or (3) is guilty of a third degree felony.
- (5) This section does not preclude payment of fees for medical, legal, or other lawful services rendered in connection with the care of a mother, delivery and care of a child, or lawful adoption proceedings, except that a child-placing agency may not:
 - (a) charge or accept payment for services that were not actually rendered; or
 - (b) charge or accept payment from a prospective adoptive parent for medical or hospital expenses that were paid for by public funds.
- (6) In accordance with federal law, only an agent or employee of the Division of Child and Family Services or of a licensed child-placing agency may certify to United States Citizenship and Immigration Services that a family meets the preadoption requirements of the Division of Child and Family Services.
- (7) A licensed child-placing agency or an attorney practicing in this state may not place a child for adoption, either temporarily or permanently, with an individual who would not be qualified for adoptive placement under Sections 78B-6-102, 78B-6-117, and 78B-6-137.
- (8)
 - (a) A child-placing agency, as that term is defined in Section 63G-20-102, that serves a resident of the state who is a birth mother or a prospective adoptive parent must be a member of a statewide consortium of licensed child-placing agencies that, together, serve all birth mothers lawfully seeking to place a child for adoption and all qualified prospective adoptive parents.
 - (b) The department shall receive and investigate any complaint against a consortium of licensed child-placing agencies.

Renumbered and Amended by Chapter 305, 2023 General Session

Amended by Chapter 466, 2023 General Session

26B-2-128 Numerical limit of foster children in a foster home.

- (1) Except as provided in Subsection (2) or (3), no more than:
 - (a) four foster children may reside in the foster home of a licensed foster parent; or
 - (b) three foster children may reside in the foster home of a certified foster parent.
- (2) When placing a sibling group into a foster home, the limits in Subsection (1) may be exceeded if:
 - (a) no other foster children reside in the foster home;
 - (b) only one other foster child resides in the foster home at the time of a sibling group's placement into the foster home; or
 - (c) a sibling group re-enters foster care and is placed into the foster home where the sibling group previously resided.
- (3) When placing a child into a foster home, the limits in Subsection (1) may be exceeded:
 - (a) to place a child into a foster home where a sibling of the child currently resides; or
 - (b) to place a child in a foster home where the child previously resided.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-129 Licensure of tribal foster homes.

- (1) The Indian Child Welfare Act, 25 U.S.C. Secs. 1901-1963, provides that Indian tribes may develop and implement tribal foster home standards.
- (2) The office shall give full faith and credit to an Indian tribe's certification or licensure of a tribal foster home for an Indian child and siblings of that Indian child, both on and off Indian country, according to standards developed and approved by the Indian tribe, pursuant to the Indian Child Welfare Act, 25 U.S.C. Secs. 1901-1963.
- (3) If the Indian tribe has not developed standards, the office shall license tribal foster homes pursuant to this part.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-130 Foster care by a child's relative.

- (1) As used in this section:
 - (a) "Custody" means the same as that term is defined in Section 80-2-102.
 - (b) "Relative" means the same as that term is defined in Section 80-3-102.
 - (c) "Temporary custody" means the same as that term is defined in Section 80-2-102.
- (2)
 - (a) In accordance with state and federal law, the division shall provide for licensure of a child's relative for foster or substitute care, when the child is in the temporary custody or custody of the Division of Child and Family Services.
 - (b) If it is determined that, under federal law, allowance is made for an approval process requiring less than full foster parent licensure proceedings for a child's relative, the division shall establish an approval process to accomplish that purpose.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-131 Child-placing agency responsibility for educational services -- Payment of costs.

- (1) A child-placing agency shall ensure that the requirements of Subsections 53G-6-202(2) and 53G-6-203(1) are met through the provision of appropriate educational services for all children served in the state by the child-placing agency.
- (2)
 - (a) If the educational services described in Subsection (1) are provided through a public school and the custodial parent or legal guardian resides outside the state, the child-placing agency shall pay all educational costs required under Sections 53G-6-306 and 53G-7-503.
 - (b) If the educational services described in Subsection (1) are provided through a public school and the custodial parent or legal guardian resides within the state, then the child-placing agency shall pay all educational costs required under Section 53G-7-503.
- (3) A child in the custody or under the care of a Utah state agency is exempt from the payment of fees required under Subsection (2).
- (4) A public school shall admit any child living within the public school's boundaries who is under the supervision of a child-placing agency upon payment by the child-placing agency of the tuition and fees required under Subsection (2).

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-132 Child-placing agency proof of authority in a proceeding.

A child-placing agency is not required to present the child-placing agency's license issued under this part, the child placing agency's certificate of incorporation, or proof of the child-placing agency's authority to consent to adoption, as proof of the child-placing agency's authority in any proceeding in which the child-placing agency is an interested party, unless the court or a party to the proceeding requests that the child-placing agency or the child-placing agency's representative establish proof of authority.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-133 Injunctive relief and civil penalty for unlawful child placing -- Enforcement by county attorney or attorney general.

- (1) The office or another interested person may commence an action in court to enjoin any person, agency, firm, corporation, or association from violating Section 26B-2-127.
- (2) The office shall:
 - (a) solicit information from the public relating to violations of Section 26B-2-127; and
 - (b) upon identifying a violation of Section 26B-2-127:
 - (i) send a written notice to the person who violated Section 26B-2-127 that describes the alleged violation; and
 - (ii) notify the following persons of the alleged violation:
 - (A) the local county attorney; and
 - (B) the Division of Professional Licensing.
- (3)
 - (a) A county attorney or the attorney general shall institute legal action as necessary to enforce the provisions of Section 26B-2-127 after being informed of an alleged violation.
 - (b) If a county attorney does not take action within 30 days after the day on which the county attorney is informed of an alleged violation of Section 26B-2-127, the attorney general may be requested to take action, and shall then institute legal proceedings in place of the county attorney.
- (4)

- (a) In addition to the remedies provided in Subsections (1) and (3), any person, agency, firm, corporation, or association found to be in violation of Section 26B-2-127 shall forfeit all proceeds identified as resulting from the transaction, and may also be assessed a civil penalty of not more than \$10,000 for each violation.
 - (b) Each act in violation of Section 26B-2-127, including each placement or attempted placement of a child, is a separate violation.
- (5)
- (a) The amount recovered as a penalty under Subsection (4) shall be placed in the General Fund of the prosecuting county, or in the state General Fund if the attorney general prosecutes.
 - (b) If two or more governmental entities are involved in the prosecution, the court shall apportion the penalty among the entities, according to the entities' involvement.
- (6) A judgment ordering the payment of any penalty or forfeiture under Subsection (4) is a lien when recorded in the judgment docket, and has the same effect and is subject to the same rules as a judgment for money in a civil action.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-134 Obligations of persons providing assessment and treatment services.

- (1) As used in this section:
- (a) "Assessor" means a licensee that provides an assessment as ordered by a court in a criminal case.
 - (b) "Criminal case" means a case in which a court of justice described in Section 78A-1-101 has ordered an individual to comply with certain terms and conditions of probation related to a criminal offense.
 - (c) "Licensee" means the same as that term is defined in Section 26B-2-101.
- (2)
- (a) Except as provided in Subsection (4), an assessor that determines that the individual requires specific treatment shall:
 - (i) provide the individual a list of all available licensees that provide the treatment; and
 - (ii) permit the individual to select a licensee described in Subsection (2)(a)(i) with which to complete the treatment.
 - (b) The list described in Subsection (2)(a)(i) may include the assessor, if the assessor is a licensee that provides the required treatment described in Subsection (2)(a).
- (3) Except as provided in Subsection (4), an assessor or other licensee may not solicit defendants as clients on any property that operates as a court of justice as described in Section 78A-1-101.
- (4) An assessor that performs services for a problem-solving court approved by the Judicial Council is not required to comply with this section.

Enacted by Chapter 257, 2023 General Session

Part 2
Health Care Facility Licensing and Inspection

26B-2-201 Definitions.

As used in this part:

- (1)

- (a) "Abortion clinic" means a type I abortion clinic or a type II abortion clinic.
- (b) "Abortion clinic" does not mean a clinic that meets the definition of hospital under Section 76-7-301 or Section 76-71-101.
- (2) "Activities of daily living" means essential activities including:
 - (a) dressing;
 - (b) eating;
 - (c) grooming;
 - (d) bathing;
 - (e) toileting;
 - (f) ambulation;
 - (g) transferring; and
 - (h) self-administration of medication.
- (3) "Ambulatory surgical facility" means a freestanding facility, which provides surgical services to patients not requiring hospitalization.
- (4) "Assistance with activities of daily living" means providing of or arranging for the provision of assistance with activities of daily living.
- (5)
 - (a) "Assisted living facility" means:
 - (i) a type I assisted living facility, which is a residential facility that provides assistance with activities of daily living and social care to two or more residents who:
 - (A) require protected living arrangements; and
 - (B) are capable of achieving mobility sufficient to exit the facility without the assistance of another person; and
 - (ii) a type II assisted living facility, which is a residential facility with a home-like setting that provides an array of coordinated supportive personal and health care services available 24 hours per day to residents who have been assessed under department rule to need any of these services.
 - (b) Each resident in a type I or type II assisted living facility shall have a service plan based on the assessment, which may include:
 - (i) specified services of intermittent nursing care;
 - (ii) administration of medication; and
 - (iii) support services promoting residents' independence and self-sufficiency.
- (6) "Birthing center" means a facility that:
 - (a) receives maternal clients and provides care during pregnancy, delivery, and immediately after delivery; and
 - (b)
 - (i) is freestanding; or
 - (ii) is not freestanding, but meets the requirements for an alongside midwifery unit described in Subsection 26B-2-228(7).
- (7) "Committee" means the Health Facility Committee created in Section 26B-1-204.
- (8) "Consumer" means any person not primarily engaged in the provision of health care to individuals or in the administration of facilities or institutions in which such care is provided and who does not hold a fiduciary position, or have a fiduciary interest in any entity involved in the provision of health care, and does not receive, either directly or through his spouse, more than 1/10 of his gross income from any entity or activity relating to health care.
- (9) "End stage renal disease facility" means a facility which furnishes staff-assisted kidney dialysis services, self-dialysis services, or home-dialysis services on an outpatient basis.

- (10) "Freestanding" means existing independently or physically separated from another health care facility by fire walls and doors and administrated by separate staff with separate records.
- (11) "General acute hospital" means a facility which provides diagnostic, therapeutic, and rehabilitative services to both inpatients and outpatients by or under the supervision of physicians.
- (12) "Governmental unit" means the state, or any county, municipality, or other political subdivision or any department, division, board, or agency of the state, a county, municipality, or other political subdivision.
- (13)
 - (a) "Health care facility" means general acute hospitals, specialty hospitals, home health agencies, hospices, nursing care facilities, residential-assisted living facilities, birthing centers, ambulatory surgical facilities, small health care facilities, abortion clinics, a clinic that meets the definition of hospital under Section 76-7-301 or 76-71-201, facilities owned or operated by health maintenance organizations, end stage renal disease facilities, and any other health care facility which the committee designates by rule.
 - (b) "Health care facility" does not include the offices of private physicians or dentists, whether for individual or group practice, except that it does include an abortion clinic.
- (14) "Health maintenance organization" means an organization, organized under the laws of any state which:
 - (a) is a qualified health maintenance organization under 42 U.S.C. Sec. 300e-9; or
 - (b)
 - (i) provides or otherwise makes available to enrolled participants at least the following basic health care services: usual physician services, hospitalization, laboratory, x-ray, emergency, and preventive services and out-of-area coverage;
 - (ii) is compensated, except for copayments, for the provision of the basic health services listed in Subsection (14)(b)(i) to enrolled participants by a payment which is paid on a periodic basis without regard to the date the health services are provided and which is fixed without regard to the frequency, extent, or kind of health services actually provided; and
 - (iii) provides physicians' services primarily directly through physicians who are either employees or partners of such organizations, or through arrangements with individual physicians or one or more groups of physicians organized on a group practice or individual practice basis.
- (15)
 - (a) "Home health agency" means an agency, organization, or facility or a subdivision of an agency, organization, or facility which employs two or more direct care staff persons who provide licensed nursing services, therapeutic services of physical therapy, speech therapy, occupational therapy, medical social services, or home health aide services on a visiting basis.
 - (b) "Home health agency" does not mean an individual who provides services under the authority of a private license.
- (16) "Hospice" means a program of care for the terminally ill and their families which occurs in a home or in a health care facility and which provides medical, palliative, psychological, spiritual, and supportive care and treatment.
- (17) "Nursing care facility" means a health care facility, other than a general acute or specialty hospital, constructed, licensed, and operated to provide patient living accommodations, 24-hour staff availability, and at least two of the following patient services:

- (a) a selection of patient care services, under the direction and supervision of a registered nurse, ranging from continuous medical, skilled nursing, psychological, or other professional therapies to intermittent health-related or paraprofessional personal care services;
 - (b) a structured, supportive social living environment based on a professionally designed and supervised treatment plan, oriented to the individual's habilitation or rehabilitation needs; or
 - (c) a supervised living environment that provides support, training, or assistance with individual activities of daily living.
- (18) "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association, and the legal successor thereof.
- (19) "Resident" means a person 21 years old or older who:
- (a) as a result of physical or mental limitations or age requires or requests services provided in an assisted living facility; and
 - (b) does not require intensive medical or nursing services as provided in a hospital or nursing care facility.
- (20) "Small health care facility" means a four to 16 bed facility that provides licensed health care programs and services to residents.
- (21) "Specialty hospital" means a facility which provides specialized diagnostic, therapeutic, or rehabilitative services in the recognized specialty or specialties for which the hospital is licensed.
- (22) "Substantial compliance" means in a department survey of a licensee, the department determines there is an absence of deficiencies which would harm the physical health, mental health, safety, or welfare of patients or residents of a licensee.
- (23) "Type I abortion clinic" means a facility, including a physician's office, but not including a general acute or specialty hospital, that:
- (a) performs abortions, as defined in Section 76-7-301, during the first trimester of pregnancy; and
 - (b) does not perform abortions, as defined in Section 76-7-301, after the first trimester of pregnancy.
- (24) "Type II abortion clinic" means a facility, including a physician's office, but not including a general acute or specialty hospital, that:
- (a) performs abortions, as defined in Section 76-7-301, after the first trimester of pregnancy; or
 - (b) performs abortions, as defined in Section 76-7-301, during the first trimester of pregnancy and after the first trimester of pregnancy.

Amended by Chapter 301, 2023 General Session

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-202 Duties of department.

- (1) The department shall:
- (a) enforce rules established pursuant to this part;
 - (b) authorize an agent of the department to conduct inspections of health care facilities pursuant to this part;
 - (c) collect information authorized by the committee that may be necessary to ensure that adequate health care facilities are available to the public;
 - (d) collect and credit fees for licenses as free revenue;
 - (e) collect and credit fees for conducting plan reviews as dedicated credits;
 - (f)

- (i) collect and credit fees for conducting clearance under Sections 26B-2-239 and 26B-2-240; and
 - (ii) beginning July 1, 2012:
 - (A) up to \$105,000 of the fees collected under Subsection (1)(f)(i) are dedicated credits; and
 - (B) the fees collected for background checks under Subsection 26B-2-240(6) and Subsection 26B-2-241(4) shall be transferred to the Department of Public Safety to reimburse the Department of Public Safety for its costs in conducting the federal background checks;
 - (g) designate an executive secretary from within the department to assist the committee in carrying out its powers and responsibilities;
 - (h) establish reasonable standards for criminal background checks by public and private entities;
 - (i) recognize those public and private entities that meet the standards established pursuant to Subsection (1)(h); and
 - (j) provide necessary administrative and staff support to the committee.
- (2) The department may:
- (a) exercise all incidental powers necessary to carry out the purposes of this part;
 - (b) review architectural plans and specifications of proposed health care facilities or renovations of health care facilities to ensure that the plans and specifications conform to rules established by the committee; and
 - (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules as necessary to implement the provisions of this part.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-203 Services required -- General acute hospitals -- Specialty Hospitals.

- (1) General acute hospitals and specialty hospitals shall remain open and be continuously ready to receive patients 24 hours of every day in a year and have an attending medical staff consisting of one or more physicians licensed to practice medicine and surgery under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.
- (2) A specialty hospital shall provide on-site all basic services required of a general acute hospital that are needed for the diagnosis, therapy, or rehabilitation offered to or required by patients admitted to or cared for in the facility.
- (3)
 - (a) A home health agency shall provide at least licensed nursing services or therapeutic services directly through the agency employees.
 - (b) A home health agency may provide additional services itself or under arrangements with another agency, organization, facility, or individual.
- (4) Beginning January 1, 2023, a hospice program shall provide at least one qualified medical provider, as that term is defined in Section 26B-4-201, for the treatment of hospice patients.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-204 Licensing of an abortion clinic -- Rulemaking authority -- Fee -- Licensing of a clinic meeting the definition of hospital.

- (1)
 - (a) No abortion clinic may operate in the state on or after January 1, 2024, or the last valid date of an abortion clinic license issued under the requirements of this section, whichever date is later.

- (b) Notwithstanding Subsection (1)(a), a licensed abortion clinic may not perform an abortion in violation of any provision of state law.
- (2) The state may not issue a license for an abortion clinic after May 2, 2023.
- (3) For any license for an abortion clinic that is issued under this section:
 - (a) A type I abortion clinic may not operate in the state without a license issued by the department to operate a type I abortion clinic.
 - (b) A type II abortion clinic may not operate in the state without a license issued by the department to operate a type II abortion clinic.
 - (c) The department shall make rules establishing minimum health, safety, sanitary, and recordkeeping requirements for:
 - (i) a type I abortion clinic; and
 - (ii) a type II abortion clinic.
 - (d) To receive and maintain a license described in this section, an abortion clinic shall:
 - (i) apply for a license on a form prescribed by the department;
 - (ii) satisfy and maintain the minimum health, safety, sanitary, and recordkeeping requirements established under Subsection (3) that relate to the type of abortion clinic licensed;
 - (iii) comply with the recordkeeping and reporting requirements of Section 76-7-313;
 - (iv) comply with the requirements of Title 76, Chapter 7, Part 3, Abortion, and Title 76, Chapter 7a, Abortion Prohibition;
 - (v) pay the annual licensing fee; and
 - (vi) cooperate with inspections conducted by the department.
 - (e) The department shall, at least twice per year, inspect each abortion clinic in the state to ensure that the abortion clinic is complying with all statutory and licensing requirements relating to the abortion clinic. At least one of the inspections shall be made without providing notice to the abortion clinic.
 - (f) The department shall charge an annual license fee, set by the department in accordance with the procedures described in Section 63J-1-504, to an abortion clinic in an amount that will pay for the cost of the licensing requirements described in this section and the cost of inspecting abortion clinics.
 - (g) The department shall deposit the licensing fees described in this section in the General Fund as a dedicated credit to be used solely to pay for the cost of the licensing requirements described in this section and the cost of inspecting abortion clinics.
- (4)
 - (a) Notwithstanding any other provision of this section, the department may license a clinic that meets the definition of hospital under Section 76-7-301 or Section 76-7a-101.
 - (b) A clinic described in Subsection (4)(a) is not defined as an abortion clinic.

Amended by Chapter 301, 2023 General Session

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-205 Exempt facilities.

This part does not apply to:

- (1) a dispensary or first aid facility maintained by any commercial or industrial plant, educational institution, or convent;
- (2) a health care facility owned or operated by an agency of the United States;
- (3) the office of a physician, physician assistant, or dentist whether it is an individual or group practice;

- (4) a health care facility established or operated by any recognized church or denomination for the practice of religious tenets administered by mental or spiritual means without the use of drugs, whether gratuitously or for compensation, if it complies with statutes and rules on environmental protection and life safety;
- (5) any health care facility owned or operated by the Department of Corrections, created in Section 64-13-2; and
- (6) a residential facility providing 24-hour care:
 - (a) that does not employ direct care staff;
 - (b) in which the residents of the facility contract with a licensed hospice agency to receive end-of-life medical care; and
 - (c) that meets other requirements for an exemption as designated by administrative rule.

Amended by Chapter 301, 2023 General Session

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-206 License required -- Not assignable or transferable -- Posting -- Expiration and renewal -- Time for compliance by operating facilities.

- (1)
 - (a) A person or governmental unit acting severally or jointly with any other person or governmental unit, may not establish, conduct, or maintain a health care facility in this state without receiving a license from the department as provided by this part and the rules adopted pursuant to this part .
 - (b) This Subsection (1) does not apply to facilities that are exempt under Section 26B-2-205.
- (2) A license issued under this part is not assignable or transferable.
- (3) The current license shall at all times be posted in each health care facility in a place readily visible and accessible to the public.
- (4)
 - (a) The department may issue a license for a period of time not to exceed 24 months from the date of issuance for health care facilities that meet the provisions of this part and department rules adopted pursuant to this part.
 - (b) Each license expires at midnight on the day designated on the license as the expiration date, unless previously revoked by the department.
 - (c) The license shall be renewed upon completion of the application requirements, unless the department finds the health care facility has not complied with the provisions of this part or the rules adopted pursuant to this part.
- (5) A license may be issued under this section only for the operation of a specific facility at a specific site by a specific person.
- (6) Any health care facility in operation at the time of adoption of any applicable rules as provided under this part shall be given a reasonable time for compliance as determined by the committee.

Amended by Chapter 301, 2023 General Session

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-207 Application for license -- Information required -- Public records.

- (1) An application for license shall be made to the department in a form prescribed by the department. The application and other documentation requested by the department as part of

the application process shall require such information as the committee determines necessary to ensure compliance with established rules.

- (2) Information received by the department in reports and inspections shall be public records, except the information may not be disclosed if it directly or indirectly identifies any individual other than the owner or operator of a health facility (unless disclosure is required by law) or if its disclosure would otherwise constitute an unwarranted invasion of personal privacy.
- (3) Information received by the department from a health care facility, pertaining to that facility's accreditation by a voluntary accrediting organization, shall be private data except for a summary prepared by the department related to licensure standards.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-208 Violations -- Denial or revocation of license -- Restricting or prohibiting new admissions -- Monitor.

- (1) If the department finds a violation of this part or any rules adopted pursuant to this part the department may take one or more of the following actions:
 - (a) serve a written statement of violation requiring corrective action, which shall include time frames for correction of all violations;
 - (b) subject to Subsection (2), deny or revoke a license if it finds:
 - (i) there has been a failure to comply with the rules established pursuant to this part;
 - (ii) evidence of aiding, abetting, or permitting the commission of any illegal act; or
 - (iii) conduct adverse to the public health, morals, welfare, and safety of the people of the state;
 - (c) restrict or prohibit new admissions to a health care facility or revoke the license of a health care facility for:
 - (i) violation of any rule adopted under this part; or
 - (ii) permitting, aiding, or abetting the commission of any illegal act in the health care facility;
 - (d) place a department representative as a monitor in the facility until corrective action is completed;
 - (e) assess to the facility the cost incurred by the department in placing a monitor;
 - (f) assess an administrative penalty as allowed by Subsection 26B-1-224(1)(a); or
 - (g) issue a cease and desist order to the facility.
- (2) If the department finds that an abortion has been performed in violation of Section 76-7-314 or 76-7a-201, the department shall deny or revoke the license.

Amended by Chapter 301, 2023 General Session

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-209 Failure to follow certain health care claims practices -- Penalties.

- (1) The department may assess a fine of up to \$500 per violation against a health care facility that violates Section 31A-26-313.
- (2) The department shall waive the fine described in Subsection (1) if:
 - (a) the health care facility demonstrates to the department that the health care facility mitigated and reversed any damage to the insured caused by the health care facility or third party's violation; or
 - (b) the insured does not pay the full amount due on the bill that is the subject of the violation, including any interest, fees, costs, and expenses, within 120 days after the day on which the health care facility or third party makes a report to a credit bureau or takes an action in violation of Section 31A-26-313.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-210 Issuance of new license after revocation -- Restoration.

- (1) If a license is revoked, the department may issue a new license only after it determines by inspection that the facility has corrected the conditions that were the basis of revocation and that the facility complies with all provisions of this part and applicable rules.
- (2) If the department does not renew a license because of noncompliance with the provisions of this part or the rules adopted under this part, the department may issue a new license only after the facility complies with all renewal requirements and the department determines that the interests of the public will not be jeopardized.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-211 License issued to facility in compliance or substantial compliance with part and rules.

- (1) The department shall issue a standard license for a health care facility which is found to be in compliance with the provisions of this part and with all applicable rules adopted by the committee.
- (2) The department may issue a provisional or conditional license for a health care facility which is in substantial compliance if the interests of the public will not be jeopardized.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-212 Intermediate care facilities for people with an intellectual disability -- Licensing.

- (1)
 - (a) It is the Legislature's intent that a person with a developmental disability be provided with an environment and surrounding that, as closely as possible, resembles small community-based, homelike settings, to allow those persons to have the opportunity, to the maximum extent feasible, to exercise their full rights and responsibilities as citizens.
 - (b) It is the Legislature's purpose, in enacting this section, to provide assistance and opportunities to enable a person with a developmental disability to achieve the person's maximum potential through increased independence, productivity, and integration into the community.
- (2) After July 1, 1990, the department may only license intermediate care beds for people with an intellectual disability in small health care facilities.
- (3) The department may define by rule "small health care facility" for purposes of licensure under this section and adopt rules necessary to carry out the requirements and purposes of this section.
- (4) This section does not apply to the renewal of a license or the licensure to a new owner of any facility that was licensed on or before July 1, 1990, and that licensure has been maintained without interruption.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-213 Rural hospital -- Optional service designation.

- (1) The Legislature finds that:
 - (a) the rural citizens of this state need access to hospitals and primary care clinics;

- (b) financial stability of remote-rural hospitals and their integration into remote-rural delivery networks is critical to ensure the continued viability of remote-rural health care; and
 - (c) administrative simplicity is essential for providing large benefits to small-scale remote-rural providers who have limited time and resources.
- (2) After July 1, 1995, the department may grant variances to remote-rural acute care hospitals for specific services currently required for licensure under general hospital standards established by department rule.
- (3) For purposes of this section, "remote-rural hospitals" are hospitals that are in a county with less than 20 people per square mile.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-214 Closing facility -- Appeal.

- (1) If the department finds a condition in any licensed health care facility that is a clear hazard to the public health, the department may immediately order that facility closed and may prevent the entrance of any resident or patient onto the premises of that facility until the condition is eliminated.
- (2) Parties aggrieved by the actions of the department under this section may obtain an adjudicative proceeding and judicial review.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-215 Action by department for injunction.

Notwithstanding the existence of any other remedy, the department may, in the manner provided by law, upon the advice of the attorney general, who shall represent the department in the proceedings, maintain an action in the name of the state for injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, management, or operation of a health care facility which is in violation of this part or rules adopted by the committee.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-216 Operating facility in violation of part a misdemeanor.

In addition to the penalties in Section 26B-1-224, any person owning, establishing, conducting, maintaining, managing, or operating a health care facility in violation of this part is guilty of a class A misdemeanor.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-217 Department agency of state to contract for certification of facilities under Social Security Act.

The department is the sole agency of the state authorized to enter into a contract with the United States government for the certification of health care facilities under Title XVIII and Title XIX of the Social Security Act, and any amendments thereto.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-218 Life and Health Insurance Guaranty Association Act not amended.

The provisions of this part do not amend, affect, or alter the provisions of Title 31A, Chapter 28, Guaranty Associations.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-219 Requirement for hospitals to provide statements of itemized charges to patients.

- (1) As used in this section, "hospital" includes:
 - (a) an ambulatory surgical facility;
 - (b) a general acute hospital; and
 - (c) a specialty hospital.
- (2) A hospital shall provide a statement of itemized charges to any patient receiving medical care or other services from that hospital.
- (3)
 - (a) The statement shall be provided to the patient or the patient's personal representative or agent at the hospital's expense, personally, by mail, or by verifiable electronic delivery after the hospital receives an explanation of benefits from a third party payer which indicates the patient's remaining responsibility for the hospital charges.
 - (b) If the statement is not provided to a third party, it shall be provided to the patient as soon as possible and practicable.
- (4) The statement required by this section:
 - (a) shall itemize each of the charges actually provided by the hospital to the patient;
 - (b)
 - (i) shall include the words in bold "THIS IS THE BALANCE DUE AFTER PAYMENT FROM YOUR HEALTH INSURER"; or
 - (ii) shall include other appropriate language if the statement is sent to the patient under Subsection (3)(b); and
 - (c) may not include charges of physicians who bill separately.
- (5) The requirements of this section do not apply to patients who receive services from a hospital under Title XIX of the Social Security Act.
- (6) Nothing in this section prohibits a hospital from sending an itemized billing statement to a patient before the hospital has received an explanation of benefits from an insurer. If a hospital provides a statement of itemized charges to a patient prior to receiving the explanation of benefits from an insurer, the itemized statement shall be marked in bold: "DUPLICATE: DO NOT PAY" or other appropriate language.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-220 Authentication of medical records.

Any entry in a medical record compiled or maintained by a health care facility may be authenticated by identifying the author of the entry by:

- (1) a signature including first initial, last name, and discipline; or
- (2) the use of a computer identification process unique to the author that definitively identifies the author.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-221 Reporting of disciplinary information -- Immunity from liability.

A health care facility licensed under this part which reports disciplinary information on a licensed nurse to the Division of Professional Licensing within the Department of Commerce as required by Section 58-31b-702 is entitled to the immunity from liability provided by that section.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-222 Licensing of a new nursing care facility -- Approval for a licensed bed in an existing nursing care facility -- Fine for excess Medicare inpatient revenue.

- (1) Notwithstanding Section 26B-2-201, as used in this section:
 - (a) "Medicaid" means the Medicaid program, as that term is defined in Section 26B-3-101.
 - (b) "Medicaid certification" means the same as that term is defined in Section 26B-3-301.
 - (c) "Nursing care facility" and "small health care facility":
 - (i) mean the following facilities licensed by the department under this part:
 - (A) a skilled nursing facility;
 - (B) an intermediate care facility; or
 - (C) a small health care facility with four to 16 beds functioning as a skilled nursing facility;
 and
 - (ii) do not mean:
 - (A) an intermediate care facility for the intellectually disabled;
 - (B) a critical access hospital that meets the criteria of 42 U.S.C. Sec. 1395i-4(c)(2) (1998);
 - (C) a small health care facility that is hospital based; or
 - (D) a small health care facility other than a skilled nursing care facility with no more than 16 beds.
 - (d) "Rural county" means the same as that term is defined in Section 26B-3-301.
- (2) Except as provided in Subsection (6) and Section 26B-2-227, a new nursing care facility shall be approved for a health facility license only if:
 - (a) under the provisions of Section 26B-3-311 the facility's nursing care facility program has received Medicaid certification or will receive Medicaid certification for each bed in the facility;
 - (b) the facility's nursing care facility program has received or will receive approval for Medicaid certification under Subsection 26B-3-311(5), if the facility is located in a rural county; or
 - (c)
 - (i) the applicant submits to the department the information described in Subsection (3); and
 - (ii) based on that information, and in accordance with Subsection (4), the department determines that approval of the license best meets the needs of the current and future patients of nursing care facilities within the area impacted by the new facility.
- (3) A new nursing care facility seeking licensure under Subsection (2) shall submit to the department the following information:
 - (a) proof of the following as reasonable evidence that bed capacity provided by nursing care facilities within the county or group of counties that would be impacted by the facility is insufficient:
 - (i) nursing care facility occupancy within the county or group of counties:
 - (A) has been at least 75% during each of the past two years for all existing facilities combined; and
 - (B) is projected to be at least 75% for all nursing care facilities combined that have been approved for licensure but are not yet operational;
 - (ii) there is no other nursing care facility within a 35-mile radius of the new nursing care facility seeking licensure under Subsection (2); and
 - (b) a feasibility study that:

- (i) shows the facility's annual Medicare inpatient revenue, including Medicare Advantage revenue, will not exceed 49% of the facility's annual total revenue during each of the first three years of operation;
 - (ii) shows the facility will be financially viable if the annual occupancy rate is at least 88%;
 - (iii) shows the facility will be able to achieve financial viability;
 - (iv) shows the facility will not:
 - (A) have an adverse impact on existing or proposed nursing care facilities within the county or group of counties that would be impacted by the facility; or
 - (B) be within a three-mile radius of an existing nursing care facility or a new nursing care facility that has been approved for licensure but is not yet operational;
 - (v) is based on reasonable and verifiable demographic and economic assumptions;
 - (vi) is based on data consistent with department or other publicly available data; and
 - (vii) is based on existing sources of revenue.
- (4) When determining under Subsection (2)(c) whether approval of a license for a new nursing care facility best meets the needs of the current and future patients of nursing care facilities within the area impacted by the new facility, the department shall consider:
- (a) whether the county or group of counties that would be impacted by the facility is underserved by specialized or unique services that would be provided by the facility; and
 - (b) how additional bed capacity should be added to the long-term care delivery system to best meet the needs of current and future nursing care facility patients within the impacted area.
- (5) The department may approve the addition of a licensed bed in an existing nursing care facility only if:
- (a) each time the facility seeks approval for the addition of a licensed bed, the facility satisfies each requirement for licensure of a new nursing care facility in Subsections (2)(c), (3), and (4); or
 - (b) the bed has been approved for Medicaid certification under Section 26B-3-311 or 26B-3-313.
- (6) Subsection (2) does not apply to a nursing care facility that:
- (a) has, by the effective date of this act, submitted to the department schematic drawings, and paid applicable fees, for a particular site or a site within a three-mile radius of that site;
 - (b) before July 1, 2016:
 - (i) filed an application with the department for licensure under this section and paid all related fees due to the department; and
 - (ii) submitted to the department architectural plans and specifications, as defined by the department by administrative rule, for the facility;
 - (c) applies for a license within three years of closing for renovation;
 - (d) replaces a nursing care facility that:
 - (i) closed within the past three years; or
 - (ii) is located within five miles of the facility;
 - (e) is undergoing a change of ownership, even if a government entity designates the facility as a new nursing care facility; or
 - (f) is a state-owned veterans home, regardless of who operates the home.
- (7)
- (a) For each year the annual Medicare inpatient revenue, including Medicare Advantage revenue, of a nursing care facility approved for a health facility license under Subsection (2) (c) exceeds 49% of the facility's total revenue for the year, the facility shall be subject to a fine of \$50,000, payable to the department.

- (b) A nursing care facility approved for a health facility license under Subsection (2)(c) shall submit to the department the information necessary for the department to annually determine whether the facility is subject to the fine in Subsection (7)(a).
- (c) The department:
 - (i) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, specifying the information a nursing care facility shall submit to the department under Subsection (7)(b);
 - (ii) shall annually determine whether a facility is subject to the fine in Subsection (7)(a);
 - (iii) may take one or more of the actions in Section 26B-2-202 or 26B-2-208 against a facility for nonpayment of a fine due under Subsection (7)(a); and
 - (iv) shall deposit fines paid to the department under Subsection (7)(a) into the Nursing Care Facilities Provider Assessment Fund, created in Section 26B-3-405.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-223 Prohibition against bed banking by nursing care facilities for Medicaid reimbursement.

- (1) As used in this section:
 - (a) "Bed banking" means the designation of a nursing care facility bed as not part of the facility's operational bed capacity.
 - (b) "Nursing care facility" means the same as that term is defined in Section 26B-2-222.
- (2) Beginning July 1, 2008, the department shall, for purposes of Medicaid reimbursement under Chapter 3, Part 1, Health Care Assistance, prohibit the banking of nursing care facility beds.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-224 Patient identity protection.

- (1) As used in this section:
 - (a) "EMTALA" means the federal Emergency Medical Treatment and Active Labor Act.
 - (b) "Health professional office" means:
 - (i) a physician's office; or
 - (ii) a dental office.
 - (c) "Medical facility" means:
 - (i) a general acute hospital;
 - (ii) a specialty hospital;
 - (iii) a home health agency;
 - (iv) a hospice;
 - (v) a nursing care facility;
 - (vi) a residential-assisted living facility;
 - (vii) a birthing center;
 - (viii) an ambulatory surgical facility;
 - (ix) a small health care facility;
 - (x) an abortion clinic;
 - (xi) a clinic that meets the definition of hospital under Section 76-7-301 or Section 76-7a-101;
 - (xii) a facility owned or operated by a health maintenance organization;
 - (xiii) an end stage renal disease facility;
 - (xiv) a health care clinic; or
 - (xv) any other health care facility that the committee designates by rule.

- (2)
 - (a) In order to discourage identity theft and health insurance fraud, and to reduce the risk of medical errors caused by incorrect medical records, a medical facility or a health professional office shall request identification from an individual prior to providing in-patient or out-patient services to the individual.
 - (b) If the individual who will receive services from the medical facility or a health professional office lacks the legal capacity to consent to treatment, the medical facility or a health professional office shall request identification:
 - (i) for the individual who lacks the legal capacity to consent to treatment; and
 - (ii) from the individual who consents to treatment on behalf of the individual described in Subsection (2)(b)(i).
- (3) A medical facility or a health professional office:
 - (a) that is subject to EMTALA:
 - (i) may not refuse services to an individual on the basis that the individual did not provide identification when requested; and
 - (ii) shall post notice in its emergency department that informs a patient of the patient's right to treatment for an emergency medical condition under EMTALA;
 - (b) may not be penalized for failing to ask for identification;
 - (c) is not subject to a private right of action for failing to ask for identification; and
 - (d) may document or confirm patient identity by:
 - (i) photograph;
 - (ii) fingerprinting;
 - (iii) palm scan; or
 - (iv) other reasonable means.
- (4) The identification described in this section:
 - (a) is intended to be used for medical records purposes only; and
 - (b) shall be kept in accordance with the requirements of the Health Insurance Portability and Accountability Act of 1996.

Amended by Chapter 301, 2023 General Session

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-225 General acute hospital to report prescribed controlled substance poisoning or overdose.

- (1) If a person who is 12 years old or older is admitted to a general acute hospital for poisoning or overdose involving a prescribed controlled substance, the general acute hospital shall, within three business days after the day on which the person is admitted, send a written report to the Division of Professional Licensing, created in Section 58-1-103, that includes:
 - (a) the patient's name and date of birth;
 - (b) each drug or other substance found in the person's system that may have contributed to the poisoning or overdose, if known;
 - (c) the name of each person who the general acute hospital has reason to believe may have prescribed a controlled substance described in Subsection (1)(b) to the person, if known; and
 - (d) the name of the hospital and the date of admission.
- (2) Nothing in this section may be construed as creating a new cause of action.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-226 Information regarding certain health care facility charges.

A health care facility licensed under this part shall, when requested by a consumer:

- (1) make a list of prices charged by the facility available for the consumer that includes the facility's:
 - (a) in-patient procedures;
 - (b) out-patient procedures;
 - (c) the 50 most commonly prescribed drugs in the facility;
 - (d) imaging services; and
 - (e) implants; and
- (2) provide the consumer with information regarding any discounts the facility provides for:
 - (a) charges for services not covered by insurance; or
 - (b) prompt payment of billed charges.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-227 Pilot program for managed care model with a small health care facility operating as a skilled nursing facility.

- (1) Notwithstanding the requirement for Medicaid certification under Sections 26B-3-310 through 26B-3-313, and Section 26B-2-222, a small health care facility with four to 16 beds, functioning as a skilled nursing facility, may be approved for licensing by the department as a pilot program in accordance with this section, and without obtaining Medicaid certification for the beds in the facility.
- (2)
 - (a) The department shall establish one pilot program with a facility that meets the qualifications under Subsection (3).
 - (b) The purpose of the pilot program described in Subsection (2)(a) is to study the impact of an integrated managed care model on cost and quality of care involving pre- and post-surgical services offered by a small health care facility operating as a skilled nursing facility.
- (3) A small health care facility with four to 16 beds that functions as a skilled nursing facility may apply for a license under the pilot program if the facility will:
 - (a) be located in:
 - (i) a county of the second class that has at least 1,800 square miles within the county; and
 - (ii) a city of the fifth class; and
 - (b) limit a patient's stay in the facility to no more than 10 days.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-228 Birthing centers -- Regulatory restrictions.

- (1) As used in this section:
 - (a) "Alongside midwifery unit" means a birthing center that meets the requirements described in Subsection (7).
 - (b) "Certified nurse midwife" means an individual who is licensed under Title 58, Chapter 44a, Nurse Midwife Practice Act.
 - (c) "Direct-entry midwife" means an individual who is licensed under Title 58, Chapter 77, Direct-Entry Midwife Act.
 - (d) "Licensed maternity care practitioner" includes:
 - (i) a physician;
 - (ii) a certified nurse midwife;

- (iii) a direct entry midwife;
 - (iv) a naturopathic physician; and
 - (v) other individuals who are licensed under Title 58, Occupations and Professions and whose scope of practice includes midwifery or obstetric care.
- (e) "Naturopathic physician" means an individual who is licensed under Title 58, Chapter 71, Naturopathic Physician Practice Act.
- (f) "Physician" means an individual who is licensed under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.
- (2) The committee and the department may not require a birthing center or a licensed maternity care practitioner who practices at a birthing center to:
 - (a) maintain admitting privileges at a general acute hospital;
 - (b) maintain a written transfer agreement with one or more general acute hospitals;
 - (c) maintain a collaborative practice agreement with a physician; or
 - (d) have a physician or certified nurse midwife present at each birth when another licensed maternity care practitioner is present at the birth and remains until the maternal patient and newborn are stable postpartum.
- (3) The committee and the department shall:
 - (a) permit all types of licensed maternity care practitioners to practice in a birthing center; and
 - (b) except as provided in Subsection (2)(b), require a birthing center to have a written plan for the transfer of a patient to a hospital in accordance with Subsection (4).
- (4) A transfer plan under Subsection (3)(b) shall:
 - (a) be signed by the patient; and
 - (b) indicate that the plan is not an agreement with a hospital.
- (5) If a birthing center transfers a patient to a licensed maternity care practitioner or facility, the responsibility of the licensed maternity care practitioner or facility, for the patient:
 - (a) does not begin until the patient is physically within the care of the licensed maternity care practitioner or facility;
 - (b) is limited to the examination and care provided after the patient is transferred to the licensed maternity care practitioner or facility; and
 - (c) does not include responsibility or accountability for the patient's decision to pursue an out-of-hospital birth and the services of a birthing center.
- (6)
 - (a) Except as provided in Subsection (6)(c), a licensed maternity care practitioner who is not practicing at a birthing center may, upon receiving a briefing from a member of a birthing center's clinical staff, issue a medical order for the birthing center's patient without assuming liability for the care of the patient for whom the order was issued.
 - (b) Regardless of the advice given or order issued under Subsection (6)(a), the responsibility and liability for caring for the patient is that of the birthing center and the birthing center's clinical staff.
 - (c) The licensed maternity care practitioner giving the order under Subsection (6)(a) is responsible and liable only for the appropriateness of the order, based on the briefing received under Subsection (6)(a).
- (7)
 - (a) A birthing center that is not freestanding may be licensed as an alongside midwifery unit if the birthing center:
 - (i) is accredited by the Commission on Accreditation of Birth Centers;
 - (ii) is connected to a hospital facility, either through a bridge, ramp, or adjacent to the labor and delivery unit within the hospital with care provided with the midwifery model of care, where

- maternal patients are received and care provided during labor, delivery, and immediately after delivery; and
- (iii) is supervised by a clinical director who is licensed as a physician as defined in Section 58-67-102 or a certified nurse midwife under Title 58, Chapter 44a, Nurse Midwife Practice Act.
- (b) An alongside midwifery unit shall have a transfer agreement in place with the adjoining hospital:
 - (i) to transfer a patient to the adjacent hospital's labor and delivery unit if a higher level of care is needed; and
 - (ii) for services that are provided by the adjacent hospital's staff in collaboration with the alongside midwifery unit staff.
- (c) An alongside midwifery unit may:
 - (i) contract with staff from the adjoining hospital to assist with newborn care or resuscitation of a patient in an emergency; and
 - (ii) integrate the alongside midwifery unit's medical records with the medical record system utilized by the adjoining hospital.
- (d) Notwithstanding Title 58, Chapter 77, Direct-Entry Midwife Act, licensure as a direct-entry midwife under Section 58-77-301 is not sufficient to practice as a licensed maternity care practitioner in an alongside midwifery unit.
- (8) The department shall hold a public hearing under Subsection 63G-3-302(2)(a) for a proposed administrative rule, and amendment to a rule, or repeal of a rule, that relates to birthing centers.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-229 Disposal of controlled substances at nursing care facilities.

- (1) As used in this section:
 - (a) "Controlled substance" means the same as that term is defined in Section 58-37-2.
 - (b)
 - (i) "Irretrievable" means a state in which the physical or chemical condition of a controlled substance is permanently altered through irreversible means so that the controlled substance is unavailable and unusable for all practical purposes.
 - (ii) A controlled substance is irretrievable if the controlled substance is non-retrievable as that term is defined in 21 C.F.R. Sec. 1300.05.
- (2) A nursing care facility that is in lawful possession of a controlled substance in the nursing care facility's inventory that desires to dispose of the controlled substance shall dispose of the controlled substance in a manner that:
 - (a) renders the controlled substance irretrievable; and
 - (b) complies with all applicable federal and state requirements for the disposal of a controlled substance.
- (3) A nursing care facility shall:
 - (a) develop a written plan for the disposal of a controlled substance in accordance with this section; and
 - (b) make the plan described in Subsection (3)(a) available to the department and the committee for inspection.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-230 Prohibition on certain age-based physician testing.

A health care facility may not require for purposes of employment, privileges, or reimbursement, that a physician, as defined in Section 58-67-102, take a cognitive test when the physician reaches a specified age, unless the test reflects the standards described in Subsections 58-67-302(5)(b)(i) through (x).

Renumbered and Amended by Chapter 305, 2023 General Session

Superseded 7/1/2024

26B-2-231 Notification of air ambulance policies and charges.

- (1) For any patient who is in need of air medical transport provider services, a health care facility shall:
- (a) provide the patient or the patient's representative with the information described in Subsection 26B-1-405(7)(a) before contacting an air medical transport provider; and
 - (b) if multiple air medical transport providers are capable of providing the patient with services, provide the patient or the patient's representative with an opportunity to choose the air medical transport provider.
- (2) Subsection (1) does not apply if the patient:
- (a) is unconscious and the patient's representative is not physically present with the patient; or
 - (b) is unable, due to a medical condition, to make an informed decision about the choice of an air medical transport provider, and the patient's representative is not physically present with the patient.

Renumbered and Amended by Chapter 305, 2023 General Session

Effective 7/1/2024

26B-2-231 Notification of air ambulance policies and charges.

- (1) For any patient who is in need of air medical transport provider services, a health care facility shall:
- (a) provide the patient or the patient's representative with the information described in Subsection 53-2d-107(8)(a) before contacting an air medical transport provider; and
 - (b) if multiple air medical transport providers are capable of providing the patient with services, provide the patient or the patient's representative with an opportunity to choose the air medical transport provider.
- (2) Subsection (1) does not apply if the patient:
- (a) is unconscious and the patient's representative is not physically present with the patient; or
 - (b) is unable, due to a medical condition, to make an informed decision about the choice of an air medical transport provider, and the patient's representative is not physically present with the patient.

Renumbered and Amended by Chapter 305, 2023 General Session

Amended by Chapter 310, 2023 General Session

26B-2-232 Treatment of aborted remains.

- (1) As used in this section, "aborted fetus" means a product of human conception, regardless of gestational age, that has died from an abortion as that term is defined in Section 76-7-301.
- (2)
- (a) A health care facility having possession of an aborted fetus shall provide for the final disposition of the aborted fetus through:

- (i) cremation as that term is defined in Section 58-9-102; or
 - (ii) interment.
 - (b) A health care facility may not conduct the final disposition of an aborted fetus less than 72 hours after an abortion is performed unless:
 - (i) the pregnant woman authorizes the health care facility, in writing, to conduct the final disposition of the aborted fetus less than 72 hours after the abortion is performed; or
 - (ii) immediate disposition is required under state or federal law.
 - (c) A health care facility may serve as an authorizing agent as defined in Section 58-9-102 with respect to the final disposition of an aborted fetus if:
 - (i) the pregnant woman provides written authorization for the health care facility to act as the authorizing agent; or
 - (ii)
 - (A) more than 72 hours have passed since the abortion was performed; and
 - (B) the pregnant woman did not exercise her right to control the final disposition of the aborted fetus under Subsection (4)(a).
 - (d) Within 120 business days after the day on which an abortion is performed, a health care facility possessing an aborted fetus shall:
 - (i) conduct the final disposition of the aborted fetus in accordance with this section; or
 - (ii) ensure that the aborted fetus is preserved until final disposition.
 - (e) A health care facility shall conduct the final disposition under this section in accordance with applicable state and federal law.
- (3) Before performing an abortion, a health care facility shall:
- (a) provide the pregnant woman with the information described in Subsection 76-7-305.5(2)(w) through:
 - (i) a form approved by the department;
 - (ii) an in-person consultation with a physician; or
 - (iii) an in-person consultation with a mental health therapist as defined in Section 58-60-102; and
 - (b) if the pregnant woman makes a decision under Subsection (4)(b), document the pregnant woman's decision under Subsection (4)(b) in the pregnant woman's medical record.
- (4) A pregnant woman who has an abortion:
- (a) except as provided in Subsection (6), has the right to control the final disposition of the aborted fetus;
 - (b) if the pregnant woman has a preference for disposition of the aborted fetus, shall inform the health care facility of the pregnant woman's decision for final disposition of the aborted fetus;
 - (c) is responsible for the costs related to the final disposition of the aborted fetus at the chosen location if the pregnant woman chooses a method or location for the final disposition of the aborted fetus that is different from the method or location that is usual and customary for the health care facility; and
 - (d) for a medication-induced abortion, shall be permitted to return the aborted fetus to the health care facility in a sealed container for disposition by the health care facility in accordance with this section.
- (5) The form described in Subsection (3)(a)(i) shall include the following information:
- "You have the right to decide what you would like to do with the aborted fetus. You may decide for the provider to be responsible for disposition of the fetus. If you are having a medication-induced abortion, you also have the right to bring the aborted fetus back to this provider for disposition after the fetus is expelled. The provider may dispose of the aborted

fetus by burial or cremation. You can ask the provider if you want to know the specific method for disposition."

(6) If the pregnant woman is a minor, the health care facility shall obtain parental consent for the disposition of the aborted fetus unless the minor is granted a court order under Subsection 76-7-304.5(1)(b).

(7)

(a) A health care facility may not include fetal remains with other biological, infectious, or pathological waste.

(b) Fetal tissue that is sent for permanently fixed pathology or used for genetic study is not subject to the requirements of this section.

(c)

(i) A health care facility is responsible for maintaining a record to demonstrate to the department that the health care facility has complied with the provisions of this section.

(ii) The records described in Subsection (7)(c)(i) shall be:

(A) maintained for at least two years; and

(B) made available to the department for inspection upon request by the department.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-233 Treatment of miscarried remains.

(1) As used in this section, "miscarried fetus" means a product of human conception, regardless of gestational age, that has died from a spontaneous or accidental death before expulsion or extraction from the mother, regardless of the duration of the pregnancy.

(2)

(a) A health care facility having possession of a miscarried fetus shall provide for the final disposition of the miscarried fetus through:

(i) cremation as that term is defined in Section 58-9-102; or

(ii) interment.

(b) A health care facility may not conduct the final disposition of a miscarried fetus less than 72 hours after a woman has her miscarried fetus expelled or extracted in the health care facility unless:

(i) the parent authorizes the health care facility, in writing, to conduct the final disposition of the miscarried fetus less than 72 hours after the miscarriage occurs; or

(ii) immediate disposition is required under state or federal law.

(c) A health care facility may serve as an authorizing agent as defined in Section 58-9-102 with respect to the final disposition of a miscarried fetus if:

(i) the parent provides written authorization for the health care facility to act as the authorizing agent; or

(ii)

(A) more than 72 hours have passed since the miscarriage occurs; and

(B) the parent did not exercise their right to control the final disposition of the miscarried fetus under Subsection (4)(a).

(d) Within 120 business days after the day on which a miscarriage occurs, a health care facility possessing miscarried remains shall:

(i) conduct the final disposition of the miscarried remains in accordance with this section; or

(ii) ensure that the miscarried remains are preserved until final disposition.

(e) A health care facility shall conduct the final disposition under this section in accordance with applicable state and federal law.

- (3)
 - (a) No more than 24 hours after a woman has her miscarried fetus expelled or extracted in a health care facility, the health care facility shall provide information to the parent or parents of the miscarried fetus regarding:
 - (i) the parents' right to determine the final disposition of the miscarried fetus;
 - (ii) the available options for disposition of the miscarried fetus; and
 - (iii) counseling that may be available concerning the death of the miscarried fetus.
 - (b) A health care facility shall:
 - (i) provide the information described in Subsection (3)(a) through:
 - (A) a form approved by the department;
 - (B) an in-person consultation with a physician; or
 - (C) an in-person consultation with a mental health therapist as defined in Section 58-60-102; and
 - (ii) if the parent or parents make a decision under Subsection (4)(b), document the parent's decision under Subsection (4)(b) in the parent's medical record.
- (4) The parents of a miscarried fetus:
 - (a) have the right to control the final disposition of the miscarried fetus;
 - (b) if the parents have a preference for disposition of the miscarried fetus, shall inform the health care facility of the parents' decision for final disposition of the miscarried fetus; and
 - (c) are responsible for the costs related to the final disposition of the miscarried fetus at the chosen location if the parents choose a method or location for the final disposition of the miscarried fetus that is different from the method or location that is usual and customary for the health care facility.
- (5) The form described in Subsection (3)(b)(i) shall include the following information:

"You have the right to decide what you would like to do with the miscarried fetus. You may decide for the provider to be responsible for disposition of the fetus. The provider may dispose of the miscarried fetus by burial or cremation. You can ask the provider if you want to know the specific method for disposition."
- (6)
 - (a) A health care facility may not include a miscarried fetus with other biological, infectious, or pathological waste.
 - (b) Fetal tissue that is sent for permanently fixed pathology or used for genetic study is not subject to the requirements of this section.
 - (c)
 - (i) A health care facility is responsible for maintaining a record to demonstrate to the department that the health care facility has complied with the provisions of this section.
 - (ii) The records described in Subsection (6)(c)(i) shall be:
 - (A) maintained for at least two years; and
 - (B) made available to the department for inspection upon request by the department.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-234 Resident consumer protection.

- (1) As used in this section:
 - (a) "Eligible requester" means:
 - (i) a resident;
 - (ii) a prospective resident;
 - (iii) a legal representative of a resident or prospective resident; or

- (iv) the department.
- (b) "Facility" means an assisted living facility or nursing care facility.
- (c) "Facility's leadership" means a facility's:
 - (i) owner;
 - (ii) administrator;
 - (iii) director; or
 - (iv) employee that is in a position to determine which providers have access to the facility.
- (d) "Personal care agency" means a person that provides assistance with activities of daily living.
- (e) "Provider" means a home health agency, hospice provider, medical provider, or personal care agency.
- (f) "Resident" means an individual who resides in a facility.
- (2) Subject to other state or federal laws, a facility may limit which providers have access to the facility if the facility complies with Subsection (3).
- (3)
 - (a) A facility that prohibits a provider from accessing the facility shall:
 - (i) before or at the time a prospective resident or prospective resident's legal representative signs an admission contract, inform the prospective resident or prospective resident's legal representative that the facility prohibits one or more providers from accessing the facility;
 - (ii) if an eligible requester requests to know which providers have access to the facility, refer the eligible requester to a member of the facility's leadership; and
 - (iii) if a provider requests to know whether the provider has access to the facility, refer the provider to a member of the facility's leadership.
 - (b) If a facility refers an eligible requester to a member of the facility's leadership under Subsection (3)(a)(ii), the member of the facility's leadership shall inform the eligible requester:
 - (i) which providers the facility:
 - (A) allows to access the facility; or
 - (B) prohibits from accessing the facility;
 - (ii) that a provider's access to the facility may change at any time; and
 - (iii) whether a person in the facility's leadership has a legal or financial interest in a provider that is allowed to access the facility.
 - (c) If a facility refers a provider to a member of the facility's leadership under Subsection (3)(a)(iii), the member of the facility's leadership:
 - (i) shall disclose whether the provider has access to the facility; and
 - (ii) may disclose any other information described in Subsection (3)(b).
 - (d) If a resident is being served by a provider that is later prohibited from accessing the facility, the facility shall:
 - (i) allow the provider access to the facility to finish the resident's current episode of care; or
 - (ii) provide to the resident a written explanation of why the provider no longer has access to the facility.
- (4) This section does not apply to a facility operated by a government unit.
- (5) The department may issue a notice of deficiency if a facility that denies a provider access under Subsection (2) does not comply with Subsection (3) at the time of the denial.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-235 Sepsis protocols for general acute hospitals -- Presenting protocols upon inspection.

- (1) As used in this section, "sepsis" means a life-threatening complication of an infection.

- (2) A general acute hospital may develop protocols for the treatment of sepsis and septic shock that are consistent with current evidence-based guidelines for the treatment of severe sepsis and septic shock.
- (3) When developing the protocols described in Subsection (2), a general acute hospital shall consider:
 - (a) a process for screening and recognizing patients with sepsis;
 - (b) a process to screen out individuals for whom the protocols would not be appropriate for treating sepsis;
 - (c) timeline goals for treating sepsis;
 - (d) different possible methods for treating sepsis and reasons to use each method;
 - (e) specific protocols to treat children who present with symptoms of sepsis or septic shock; and
 - (f) training requirements for staff.
- (4) A general acute hospital may update the general acute hospital's sepsis protocols as new data on the treatment of sepsis and septic shock becomes available.
- (5) The department, or an entity assigned by the department to inspect a general acute hospital, may request a copy of the sepsis protocols described in this section when inspecting a general acute hospital.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-236 Monitoring device -- Installation, notice, and consent -- Admission and discharge -- Liability.

- (1) As used in this section:
 - (a) "Legal representative" means an individual who is legally authorized to make health care decisions on behalf of another individual.
 - (b)
 - (i) "Monitoring device" means:
 - (A) a video surveillance camera; or
 - (B) a microphone or other device that captures audio.
 - (ii) "Monitoring device" does not include:
 - (A) a device that is specifically intended to intercept wire, electronic, or oral communication without notice to or the consent of a party to the communication; or
 - (B) a device that is connected to the Internet or that is set up to transmit data via an electronic communication.
 - (c) "Resident" means an individual who receives health care from a facility.
 - (d) "Room" means a resident's private or shared primary living space.
 - (e) "Roommate" means an individual sharing a room with a resident.
- (2) A resident or the resident's legal representative may operate or install a monitoring device in the resident's room if the resident and the resident's legal representative, if any, unless the resident is incapable of informed consent:
 - (a) notifies the resident's assisted living facility in writing that the resident or the resident's legal representative, if any:
 - (i) intends to operate or install a monitoring device in the resident's room; and
 - (ii) consents to a waiver agreement, if required by an assisted living facility;
 - (b) obtains written consent from each of the resident's roommates, and their legal representative, if any, that specifically states the hours when each roommate consents to the resident or the resident's legal representative operating the monitoring device; and
 - (c) assumes all responsibility for any cost related to installing or operating the monitoring device.

- (3) An assisted living facility shall not be civilly or criminally liable to:
 - (a) a resident or resident's roommate for the operation of a monitoring device consistent with this part; and
 - (b) any person other than the resident or resident's roommate for any claims related to the use or operation of a monitoring device consistent with this part, unless the claim is caused by the acts or omissions of an employee or agent of the assisted living facility.
- (4)
 - (a) An assisted living facility may not deny an individual admission to the facility for the sole reason that the individual or the individual's legal representative requests to install or operate a monitoring device in the individual's room.
 - (b) An assisted living facility may not discharge a resident for the sole reason that the resident or the resident's legal representative requests to install or operate a monitoring device in the individual's room.
 - (c) An assisted living facility may require the resident or the resident's legal representative to place a sign near the entrance of the resident's room that states that the room contains a monitoring device.
- (5) Notwithstanding any other provision of this part, an individual may not, under this part, operate a monitoring device in an assisted living facility without a court order:
 - (a) in secret; or
 - (b) with an intent to intercept a wire, electronic, or oral communication without notice to or the consent of a party to the communication.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-237 Transfer or discharge from an assisted living facility.

- (1) As used in this section:
 - (a) "Ombudsman" means the same as that term is defined in Section 26B-2-301.
 - (b) "Resident" means an individual who receives health care from an assisted living facility.
 - (c) "Responsible person" means an individual who:
 - (i) is designated in writing by a resident to receive communication on behalf of the resident; or
 - (ii) is legally authorized to make health care decisions on behalf of the resident.
- (2) A facility is subject to the requirements in Subsection (3) if the transfer or discharge:
 - (a) is initiated by the facility for any reason;
 - (b) is objected to by the resident or the resident's responsible person;
 - (c) was not initiated by a verbal or written request from the resident; or
 - (d) is inconsistent with the resident's preferences and stated goals for care.
- (3) Before a transfer or discharge described in Subsection (2) occurs, the assisted living facility from which the resident is transferred or discharged shall:
 - (a) notify the resident and the resident's responsible person, if any, in writing and in a language and a manner that is most likely to be understood by the resident and the resident's responsible person, of:
 - (i) the reasons for the transfer or discharge;
 - (ii) the effective date of the transfer or discharge;
 - (iii) the location to which the resident will be transferred or discharged, if known; and
 - (iv) the name, address, email, and telephone number of the ombudsman;
 - (b) send a copy, in English, of the notice described in Subsection (3)(a) to the ombudsman on the same day on which the assisted living facility delivers the notice described in Subsection (3)
 - (a) to the resident and the resident's responsible person;

- (c) provide the notice described in Subsection (3)(a) at least 30 days before the day on which the resident is transferred or discharged, unless:
 - (i) notice for a shorter period of time is necessary to protect:
 - (A) the safety of individuals in the assisted living facility from endangerment due to the medical or behavioral status of the resident; or
 - (B) the health of individuals in the assisted living facility from endangerment due to the resident's continued residency;
 - (ii) an immediate transfer or discharge is required by the resident's urgent medical needs; or
 - (iii) the resident has not resided in the assisted living facility for at least 30 days;
 - (d) update the transfer or discharge notice as soon as practicable before the transfer or discharge if information in the notice changes before the transfer or discharge;
 - (e) orally explain to the resident:
 - (i) the services available through the ombudsman; and
 - (ii) the contact information for the ombudsman; and
 - (f) provide and document the provision of preparation and orientation for the resident, in a language and manner the resident is most likely to understand, to ensure a safe and orderly transfer or discharge from the assisted living facility.
- (4) In the event of an assisted living facility closure, the assisted living facility shall provide written notification of the closure to the ombudsman, each resident of the facility, and each resident's responsible person.

Amended by Chapter 268, 2023 General Session

Renumbered and Amended by Chapter 305, 2023 General Session

Amended by Chapter 305, 2023 General Session, (Coordination Clause)

26B-2-238 Definitions for Sections 26B-2-238 through 26B-2-241.

As used in this section and Sections 26B-2-239, 26B-2-240, and 26B-2-241:

- (1) "Clearance" means approval by the department under Section 26B-2-239 for an individual to have direct patient access.
- (2) "Covered body" means a covered provider, covered contractor, or covered employer.
- (3) "Covered contractor" means a person that supplies covered individuals, by contract, to a covered employer or covered provider.
- (4) "Covered employer" means an individual who:
 - (a) engages a covered individual to provide services in a private residence to:
 - (i) an aged individual, as defined by department rule; or
 - (ii) a disabled individual, as defined by department rule;
 - (b) is not a covered provider; and
 - (c) is not a licensed health care facility within the state.
- (5) "Covered individual":
 - (a) means an individual:
 - (i) whom a covered body engages; and
 - (ii) who may have direct patient access;
 - (b) includes:
 - (i) a nursing assistant, as defined by department rule;
 - (ii) a personal care aide, as defined by department rule;
 - (iii) an individual licensed to engage in the practice of nursing under Title 58, Chapter 31b, Nurse Practice Act;

- (iv) a provider of medical, therapeutic, or social services, including a provider of laboratory and radiology services;
 - (v) an executive;
 - (vi) administrative staff, including a manager or other administrator;
 - (vii) dietary and food service staff;
 - (viii) housekeeping and maintenance staff; and
 - (ix) any other individual, as defined by department rule, who has direct patient access; and
 - (c) does not include a student, as defined by department rule, directly supervised by a member of the staff of the covered body or the student's instructor.
- (6) "Covered provider" means:
- (a) an end stage renal disease facility;
 - (b) a long-term care hospital;
 - (c) a nursing care facility;
 - (d) a small health care facility;
 - (e) an assisted living facility;
 - (f) a hospice;
 - (g) a home health agency; or
 - (h) a personal care agency.
- (7) "Direct patient access" means for an individual to be in a position where the individual could, in relation to a patient or resident of the covered body who engages the individual:
- (a) cause physical or mental harm;
 - (b) commit theft; or
 - (c) view medical or financial records.
- (8) "Engage" means to obtain one's services:
- (a) by employment;
 - (b) by contract;
 - (c) as a volunteer; or
 - (d) by other arrangement.
- (9) "Long-term care hospital":
- (a) means a hospital that is certified to provide long-term care services under the provisions of 42 U.S.C. Sec. 1395tt; and
 - (b) does not include a critical access hospital, designated under 42 U.S.C. Sec. 1395i-4(c)(2).
- (10) "Patient" means an individual who receives health care services from one of the following covered providers:
- (a) an end stage renal disease facility;
 - (b) a long-term care hospital;
 - (c) a hospice;
 - (d) a home health agency; or
 - (e) a personal care agency.
- (11) "Personal care agency" means a health care facility defined by department rule.
- (12) "Resident" means an individual who receives health care services from one of the following covered providers:
- (a) a nursing care facility;
 - (b) a small health care facility;
 - (c) an assisted living facility; or
 - (d) a hospice that provides living quarters as part of its services.
- (13) "Residential setting" means a place provided by a covered provider:
- (a) for residents to live as part of the services provided by the covered provider; and

- (b) where an individual who is not a resident also lives.
- (14) "Volunteer" means an individual, as defined by department rule, who provides services without pay or other compensation.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-239 Clearance required -- Application by covered providers, covered contractors, and individuals.

- (1) The definitions in Section 26B-2-238 apply to this section.
- (2)
 - (a) A covered provider may engage a covered individual only if the individual has clearance.
 - (b) A covered contractor may supply a covered individual to a covered employer or covered provider only if the individual has clearance.
 - (c) A covered employer may engage a covered individual who does not have clearance.
- (3)
 - (a) Notwithstanding Subsections (2)(a) and (b), if a covered individual does not have clearance, a covered provider may engage the individual or a covered contractor may supply the individual to a covered provider or covered employer:
 - (i) under circumstances specified by department rule; and
 - (ii) only while an application for clearance for the individual is pending.
 - (b) For purposes of Subsection (3)(a), an application is pending if the following have been submitted to the department for the individual:
 - (i) an application for clearance;
 - (ii) the personal identification information specified by the department under Subsection 26B-2-240(4)(b); and
 - (iii) any fees established by the department under Subsection 26B-2-240(9).
- (4)
 - (a) As provided in Subsection (4)(b), each covered provider and covered contractor operating in this state shall:
 - (i) collect from each covered individual the contractor engages, and each individual the contractor intends to engage as a covered individual, the personal identification information specified by the department under Subsection 26B-2-240(4)(b); and
 - (ii) submit to the department an application for clearance for the individual, including:
 - (A) the personal identification information; and
 - (B) any fees established by the department under Subsection 26B-2-240(9).
 - (b) Clearance granted for an individual pursuant to an application submitted by a covered provider or a covered contractor is valid until the later of:
 - (i) two years after the individual is no longer engaged as a covered individual; or
 - (ii) the covered provider's or covered contractor's next license renewal date.
- (5)
 - (a) A covered provider that provides services in a residential setting shall:
 - (i) collect the personal identification information specified by the department under Subsection 26B-2-240(4)(b) for each individual 12 years old or older, other than a resident, who resides in the residential setting; and
 - (ii) submit to the department an application for clearance for the individual, including:
 - (A) the personal identification information; and
 - (B) any fees established by the department under Subsection 26B-2-240(9).

- (b) A covered provider that provides services in a residential setting may allow an individual 12 years old or older, other than a resident, to reside in the residential setting only if the individual has clearance.
- (6)
 - (a) An individual may apply for clearance by submitting to the department an application, including:
 - (i) the personal identification information specified by the department under Subsection 26B-2-240(4)(b); and
 - (ii) any fees established by the department under Subsection 26B-2-240(9).
 - (b) Clearance granted to an individual who makes application under Subsection (6)(a) is valid for two years unless the department determines otherwise based on the department's ongoing review under Subsection 26B-2-240(4)(a).

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-240 Department authorized to grant, deny, or revoke clearance -- Department may limit direct patient access -- Clearance.

- (1) The definitions in Section 26B-2-238 apply to this section.
- (2)
 - (a) As provided in this section, the department may grant, deny, or revoke clearance for an individual, including a covered individual.
 - (b) The department may limit the circumstances under which a covered individual granted clearance may have direct patient access, based on the relationship factors under Subsection (4) and other mitigating factors related to patient and resident protection.
 - (c) The department shall determine whether to grant clearance for each applicant for whom it receives:
 - (i) the personal identification information specified by the department under Subsection (4)(b); and
 - (ii) any fees established by the department under Subsection (9).
 - (d) The department shall establish a procedure for obtaining and evaluating relevant information concerning covered individuals, including fingerprinting the applicant and submitting the prints to the Criminal Investigations and Technical Services Division of the Department of Public Safety for checking against applicable state, regional, and national criminal records files.
- (3) The department may review the following sources to determine whether an individual should be granted or retain clearance, which may include:
 - (a) Department of Public Safety arrest, conviction, and disposition records described in Title 53, Chapter 10, Criminal Investigations and Technical Services Act, including information in state, regional, and national records files;
 - (b) juvenile court arrest, adjudication, and disposition records, as allowed under Section 78A-6-209;
 - (c) federal criminal background databases available to the state;
 - (d) the Division of Child and Family Services Licensing Information System described in Section 80-2-1002;
 - (e) child abuse or neglect findings described in Section 80-3-404;
 - (f) the Division of Aging and Adult Services vulnerable adult abuse, neglect, or exploitation database described in Section 26B-6-210;
 - (g) registries of nurse aids described in 42 C.F.R. Sec. 483.156;

- (h) licensing and certification records of individuals licensed or certified by the Division of Professional Licensing under Title 58, Occupations and Professions; and
 - (i) the List of Excluded Individuals and Entities database maintained by the United States Department of Health and Human Services' Office of Inspector General.
- (4) The department shall adopt rules that:
- (a) specify the criteria the department will use to determine whether an individual is granted or retains clearance:
 - (i) based on an initial evaluation and ongoing review of information under Subsection (3); and
 - (ii) including consideration of the relationship the following may have to patient and resident protection:
 - (A) warrants for arrest;
 - (B) arrests;
 - (C) convictions, including pleas in abeyance;
 - (D) pending diversion agreements;
 - (E) adjudications by a juvenile court under Section 80-6-701 if the individual is over 28 years old and has been convicted, has pleaded no contest, or is subject to a plea in abeyance or diversion agreement for a felony or misdemeanor, or the individual is under 28 years old; and
 - (F) any other findings under Subsection (3); and
 - (b) specify the personal identification information that must be submitted by an individual or covered body with an application for clearance, including:
 - (i) the applicant's Social Security number; and
 - (ii) fingerprints.
- (5) For purposes of Subsection (4)(a), the department shall classify a crime committed in another state according to the closest matching crime under Utah law, regardless of how the crime is classified in the state where the crime was committed.
- (6) The Department of Public Safety, the Administrative Office of the Courts, the Division of Professional Licensing, and any other state agency or political subdivision of the state:
- (a) shall allow the department to review the information the department may review under Subsection (3); and
 - (b) except for the Department of Public Safety, may not charge the department for access to the information.
- (7) The department shall adopt measures to protect the security of the information it reviews under Subsection (3) and strictly limit access to the information to department employees responsible for processing an application for clearance.
- (8) The department may disclose personal identification information specified under Subsection (4)(b) to other divisions and offices within the department to verify that the subject of the information is not identified as a perpetrator or offender in the information sources described in Subsections (3)(d) through (f).
- (9) The department may establish fees, in accordance with Section 63J-1-504, for an application for clearance, which may include:
- (a) the cost of obtaining and reviewing information under Subsection (3);
 - (b) a portion of the cost of creating and maintaining the Direct Access Clearance System database under Section 26B-2-241; and
 - (c) other department costs related to the processing of the application and the ongoing review of information pursuant to Subsection (4)(a) to determine whether clearance should be retained.

Renumbered and Amended by Chapter 305, 2023 General Session

Superseded 7/1/2024

26B-2-241 Direct Access Clearance System database -- Contents and use -- Department of Public Safety retention of information and notification -- No civil liability for providing information.

- (1) The definitions in Section 26B-2-238 apply to this section.
- (2) The department shall create and maintain a Direct Access Clearance System database, which:
 - (a) includes the names of individuals for whom the department has received:
 - (i) an application for clearance under this part; or
 - (ii) an application for background clearance under Section 26B-4-124; and
 - (b) indicates whether an application is pending and whether clearance has been granted and retained for:
 - (i) an applicant under this part; and
 - (ii) an applicant for background clearance under Section 26B-4-124.
- (3)
 - (a) The department shall allow covered providers and covered contractors to access the database electronically.
 - (b) Data accessible to a covered provider or covered contractor is limited to the information under Subsections (2)(a)(i) and (2)(b)(i) for:
 - (i) covered individuals engaged by the covered provider or covered contractor; and
 - (ii) individuals:
 - (A) whom the covered provider or covered contractor could engage as covered individuals; and
 - (B) who have provided the covered provider or covered contractor with sufficient personal identification information to uniquely identify the individual in the database.
 - (c)
 - (i) The department may establish fees, in accordance with Section 63J-1-504, for use of the database by a covered contractor.
 - (ii) The fees may include, in addition to any fees established by the department under Subsection 26B-2-240(9), an initial set-up fee, an ongoing access fee, and a per-use fee.
- (4) The Criminal Investigations and Technical Services Division within the Department of Public Safety shall:
 - (a) retain, separate from other division records, personal information, including any fingerprints, sent to the division by the department pursuant to Subsection 26B-2-240(3)(a); and
 - (b) notify the department upon receiving notice that an individual for whom personal information has been retained is the subject of:
 - (i) a warrant for arrest;
 - (ii) an arrest;
 - (iii) a conviction, including a plea in abeyance; or
 - (iv) a pending diversion agreement.
- (5) A covered body is not civilly liable for submitting to the department information required under this section, Section 26B-2-239, or Section 26B-2-240, or refusing to employ an individual who does not have clearance to have direct patient access under Section 26B-2-240.

Renumbered and Amended by Chapter 305, 2023 General Session

Effective 7/1/2024

26B-2-241 Direct Access Clearance System database -- Contents and use -- Department of Public Safety retention of information and notification -- No civil liability for providing information.

- (1) The definitions in Section 26B-2-238 apply to this section.
- (2) The department shall create and maintain a Direct Access Clearance System database, which:
 - (a) includes the names of individuals for whom:
 - (i) the department has received an application for clearance under this part; or
 - (ii) the Bureau of Emergency Medical Services has received an application for background clearance under Section 53-2d-410; and
 - (b) indicates whether an application is pending and whether clearance has been granted and retained for:
 - (i) an applicant under this part; and
 - (ii) an applicant for background clearance under Section 53-2d-410.
- (3)
 - (a) The department shall allow covered providers and covered contractors to access the database electronically.
 - (b) Data accessible to a covered provider or covered contractor is limited to the information under Subsections (2)(a)(i) and (2)(b)(i) for:
 - (i) covered individuals engaged by the covered provider or covered contractor; and
 - (ii) individuals:
 - (A) whom the covered provider or covered contractor could engage as covered individuals; and
 - (B) who have provided the covered provider or covered contractor with sufficient personal identification information to uniquely identify the individual in the database.
 - (c)
 - (i) The department may establish fees, in accordance with Section 63J-1-504, for use of the database by a covered contractor.
 - (ii) The fees may include, in addition to any fees established by the department under Subsection 26B-2-240(9), an initial set-up fee, an ongoing access fee, and a per-use fee.
- (4) The Criminal Investigations and Technical Services Division within the Department of Public Safety shall:
 - (a) retain, separate from other division records, personal information, including any fingerprints, sent to the division by the department pursuant to Subsection 26B-2-240(3)(a); and
 - (b) notify the department upon receiving notice that an individual for whom personal information has been retained is the subject of:
 - (i) a warrant for arrest;
 - (ii) an arrest;
 - (iii) a conviction, including a plea in abeyance; or
 - (iv) a pending diversion agreement.
- (5) A covered body is not civilly liable for submitting to the department information required under this section, Section 26B-2-239, or Section 26B-2-240, or refusing to employ an individual who does not have clearance to have direct patient access under Section 26B-2-240.

Renumbered and Amended by Chapter 305, 2023 General Session
Amended by Chapter 310, 2023 General Session

26B-2-242 Visitation policy.

- (1) As used in this section:

- (a) "Patient" means an individual who receives care or services from a health care facility.
 - (b) "Personal representative" means an individual described in 45 C.F.R. Sec. 164.502(g).
 - (c) "Primary visitor" means an individual who a patient designates under Subsection (3).
- (2) A health care facility shall establish visitation policies and procedures that shall, at a minimum, include provisions regarding:
- (a) infection control;
 - (b) infection control education for visitors;
 - (c) personal protective equipment requirements when necessary for infection control;
 - (d) for a visitor who is not a primary visitor:
 - (i) maximum duration of visits;
 - (ii) maximum number of visitors a patient may have each day;
 - (iii) maximum number of visitors a patient may have at one time; and
 - (e) the individual or position at the health care facility that is responsible for ensuring that staff adhere to the policies and procedures.
- (3)
- (a) A patient or the patient's personal representative may designate one individual as a primary visitor.
 - (b) Except as provided in Subsection (5), a health care facility may not limit the duration or frequency of a primary visitor's visits to the designating patient.
- (4) A health care facility may not:
- (a) require a visitor or primary visitor to comply with infection control measures that are more restrictive than the infection control measures the health care facility requires of the health care facility's staff;
 - (b) require a visitor or primary visitor to show proof of vaccination or immunization status;
 - (c) except as provided in Subsection (5), prohibit physical contact between the visitor and the patient the visitor is visiting; or
 - (d) deny a visitor or primary visitor access to the patient unless visitation is denied, modified, or limited as provided in Subsection (5).
- (5) A health care facility may:
- (a) exclude certain areas of the health care facility from visitor and primary visitor access;
 - (b) require a visitor or a primary visitor to agree in writing to follow the health care facility's visitation policies and procedures before allowing access to the patient;
 - (c) suspend or refuse in-person visitation for a visitor or a primary visitor if the visitor or primary visitor violates the health care facility's visitation policies and procedures;
 - (d) remove a visitor or primary visitor or deny visitation, if the patient is undergoing a procedure or receiving treatment that would be impeded by visitation;
 - (e) deny visitation for a visitor or primary visitor if the patient or personal representative objects to the visit; or
 - (f) prohibit physical contact or visitation if:
 - (i) the visit or physical contact is prohibited by law;
 - (ii) the patient is in the custody of the state; or
 - (iii) the health care facility determines the visit or physical contact:
 - (A) creates a physical safety risk to the patient, the visitor or primary visitor, or the health care facility's staff;
 - (B) is counter therapeutic to the patient's well-being; or
 - (C) is disruptive to the patient's care or treatment.
- (6) A health care facility shall provide the department with a copy of the health care facility's visitation policies and procedures:

- (a) upon the department's request; and
- (b) when the health care facility:
 - (i) obtains a license to operate from the department;
 - (ii) renews the license from the department; and
 - (iii) changes ownership.
- (7) A health care facility shall make visitation policies and procedures created in accordance with this section available on the health care facility's website.
- (8) The department shall provide:
 - (a) a description of the requirements of this section on the department's website; and
 - (b) a method for the public to report a violation of this section.
- (9) This section does not apply to the Utah State Hospital.

Enacted by Chapter 276, 2023 General Session

Part 3

Long Term Care Ombudsman

26B-2-301 Definitions.

As used in this part:

- (1) "Assisted living facility" means the same as that term is defined in Section 26B-2-201.
- (2) "Auxiliary aids and services" means items, equipment, or services that assist in effective communication between an individual who has a mental, hearing, vision, or speech disability and another individual.
- (3) "Division" means the Division of Customer Experience.
- (4) "Government agency" means any department, division, office, bureau, board, commission, authority, or any other agency or instrumentality created by the state, or to which the state is a party, or created by any county or municipality, which is responsible for the regulation, visitation, inspection, or supervision of facilities, or which provides services to patients, residents, or clients of facilities.
- (5) "Intermediate care facility" means the same as that term is defined in Section 58-15-101.
- (6)
 - (a) "Long-term care facility" means:
 - (i) a skilled nursing facility;
 - (ii) except as provided in Subsection (6)(b), an intermediate care facility;
 - (iii) a nursing home;
 - (iv) a small health care facility;
 - (v) a small health care facility type N; or
 - (vi) an assisted living facility.
 - (b) "Long-term care facility" does not mean an intermediate care facility for people with an intellectual disability, as defined in Section 58-15-101.
- (7) "Ombudsman" means the administrator of the long-term care ombudsman program, created pursuant to Section 26B-2-303.
- (8) "Ombudsman program" means the Long-Term Care Ombudsman Program.
- (9) "Resident" means an individual who resides in a long-term care facility.
- (10) "Skilled nursing facility" means the same as that term is defined in Section 58-15-101.
- (11) "Small health care facility" means the same as that term is defined in Section 26B-2-201.

- (12) "Small health care facility type N" means a residence in which a licensed nurse resides and provides protected living arrangements, nursing care, and other services on a daily basis for two to three individuals who are also residing in the residence and are unrelated to the licensee.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-302 Legislative findings -- Purpose -- Ombudsman.

- (1) The Legislature finds and declares that the citizens of this state should be assisted in asserting their civil and human rights as patients, residents, and clients of long-term care facilities created to serve their specialized needs and problems; and that for the health, safety, and welfare of these citizens, the state should take appropriate action through an adequate legal framework to address their difficulties.
- (2) The purpose of this part is to establish within the division the Long-Term Care Ombudsman Program for the citizens of this state and identify duties and responsibilities of that program and of the ombudsman, in order to address problems relating to long-term care and to fulfill federal requirements.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-303 Long-Term Care Ombudsman Program -- Responsibilities.

- (1)
- (a) There is created within the division the ombudsman program for the purpose of promoting, advocating, and ensuring the adequacy of care received and the quality of life experienced by residents of long-term care facilities within the state.
- (b) Subject to the rules made under Section 26B-6-110, the ombudsman is responsible for:
- (i) receiving and resolving complaints relating to residents of long-term care facilities;
- (ii) conducting investigations of any act, practice, policy, or procedure of a long-term care facility or government agency that the ombudsman has reason to believe affects or may affect the health, safety, welfare, or civil and human rights of a resident of a long-term care facility;
- (iii) coordinating the department's services for residents of long-term care facilities to ensure that those services are made available to eligible citizens of the state; and
- (iv) providing training regarding the delivery and regulation of long-term care to public agencies, local ombudsman program volunteers, and operators and employees of long-term care facilities.
- (2)
- (a) A long-term care facility shall display an ombudsman program information poster in a location that is readily visible to all residents, visitors, and staff members.
- (b) The division is responsible for providing the posters, which shall include phone numbers for local ombudsman programs.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-304 Powers and responsibilities of ombudsman.

The long-term care ombudsman shall:

- (1) comply with Title VII of the federal Older Americans Act, 42 U.S.C. 3058 et seq.;
- (2) establish procedures for and engage in receiving complaints, conducting investigations, reporting findings, issuing findings and recommendations, promoting community contact and

- involvement with residents of long-term care facilities through the use of volunteers, and publicizing its functions and activities;
- (3) investigate an administrative act or omission of a long-term care facility or governmental agency if the act or omission relates to the purposes of the ombudsman. The ombudsman may exercise its authority under this subsection without regard to the finality of the administrative act or omission, and it may make findings in order to resolve the subject matter of its investigation;
 - (4) recommend to the division rules that it considers necessary to carry out the purposes of the ombudsman;
 - (5) cooperate and coordinate with governmental entities and voluntary assistance organizations in exercising its powers and responsibilities;
 - (6) request and receive cooperation, assistance, services, and data from any governmental agency, to enable it to properly exercise its powers and responsibilities;
 - (7) establish local ombudsman programs to assist in carrying out the purposes of this part, which shall meet the standards developed by the division, and possess all of the authority and power granted to the ombudsman program under this part; and
 - (8) exercise other powers and responsibilities as reasonably required to carry out the purposes of this part.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-305 Procedures -- Adjudicative proceedings.

The ombudsman shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in the ombudsman's adjudicative proceedings.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-306 Investigation of complaints -- Procedures.

- (1) The ombudsman shall investigate each complaint the ombudsman receives. An investigation may consist of a referral to another public agency, the collecting of facts and information over the telephone, or an inspection of the long-term care facility that is named in the complaint.
- (2) In making an investigation, the ombudsman may engage in actions the ombudsman considers appropriate, including:
 - (a) making inquiries and obtaining information;
 - (b) holding investigatory hearings;
 - (c) entering and inspecting any premises, without notice to the facility, provided the investigator presents, upon entering the premises, identification as an individual authorized by this part to inspect the premises; and
 - (d) inspecting or obtaining a book, file, medical record, or other record required by law to be retained by the long-term care facility or governmental agency, pertaining to residents, subject to Subsection (3).
- (3)
 - (a) Before reviewing a resident's records, the ombudsman shall seek to obtain from the resident, or the resident's legal representative, permission in writing, orally, or through the use of auxiliary aids and services to review the records.
 - (b) The effort to obtain permission under Subsection (3)(a) shall include personal contact with the resident or the resident's legal representative. If the resident or the resident's legal representative refuses to give permission, the ombudsman shall record and abide by this decision.

- (c) If the ombudsman's attempt to obtain permission fails for a reason other than the refusal of the resident or the resident's legal representative to give permission, the ombudsman may review the records.
- (d) If the ombudsman has reasonable cause to believe that the resident is incompetent to give permission and that the resident's legal representative is not acting in the best interest of the resident, the ombudsman shall determine whether review of the resident's records is in the best interest of the resident.
- (e) If the ombudsman determines that review of the resident's records is in the best interest of the resident, the ombudsman shall review the records.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-307 Confidentiality of materials relating to complaints or investigations -- Immunity from liability -- Discriminatory, disciplinary, or retaliatory actions prohibited.

- (1) The ombudsman shall establish procedures to ensure that all files maintained by the ombudsman program are disclosed only at the discretion of and under the authority of the ombudsman. The identity of a complainant or resident of a long-term care facility may not be disclosed by the ombudsman unless:
 - (a) the complainant or resident, or the legal representative of either, consents in writing, orally, or through the use of auxiliary aids and services to the disclosure;
 - (b) disclosure is ordered by the court; or
 - (c) the disclosure is approved by the ombudsman and is made, as part of an investigation involving the resident, to an agency that:
 - (i) has statutory responsibility for the resident;
 - (ii) has statutory responsibility over the action alleged in the complaint;
 - (iii) is able to assist the ombudsman to achieve resolution of the complaint; or
 - (iv) is able to provide expertise that would benefit the resident.
- (2) Neither the ombudsman nor the ombudsman's agent or designee may be required to testify in court with respect to confidential matters, except as the court finds necessary to enforce this part.
- (3) Any person who makes a complaint to the ombudsman pursuant to this part is immune from any civil or criminal liability unless the complaint was made maliciously or without good faith.
- (4)
 - (a) Discriminatory, disciplinary, or retaliatory action may not be taken against a volunteer or employee of a long-term care facility or governmental agency, or against a resident of a long-term care facility, for any communication made or information given or disclosed to aid the ombudsman or other appropriate public agency in carrying out its duties and responsibilities, unless the same was done maliciously or without good faith.
 - (b) This subsection does not infringe on the rights of an employer to supervise, discipline, or terminate an employee for any other reason.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-308 Prohibited acts -- Penalty.

- (1) No person may:
 - (a) give or cause to be given advance notice to a long-term care facility or agency that an investigation or inspection under the direction of the ombudsman is pending or under consideration, except as provided by law;

- (b) disclose confidential information submitted to the ombudsman pursuant to this part, except as provided by law;
 - (c) willfully interfere with the lawful actions of the ombudsman;
 - (d) willfully refuse to comply with lawful demands of the ombudsman, including the demand for immediate entry into or inspection of the premises of any long-term care facility or agency or for immediate access to a resident of a long-term care facility; or
 - (e) offer or accept any compensation, gratuity, or promise thereof in an effort to affect the outcome of a matter being investigated or of a matter that is before the ombudsman for determination of whether an investigation should be conducted.
- (2) Violation of any provision of this part constitutes a class B misdemeanor.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-309 Assisted living facility transfers.

- (1) After the ombudsman receives a notice described in Subsection 26B-2-237(2)(b), the ombudsman shall:
- (a) review the notice; and
 - (b) contact the resident or the resident's responsible person to conduct a voluntary interview.
- (2) The voluntary interview described in Subsection (1)(b) shall:
- (a) provide the resident with information about the services available through the ombudsman;
 - (b) confirm the details in the notice described in Subsection 26B-2-237(2)(b), including:
 - (i) the name of the resident;
 - (ii) the reason for the transfer or discharge;
 - (iii) the date of the transfer or discharge; and
 - (iv) a description of the resident's next living arrangement; and
 - (c) provide the resident an opportunity to discuss any concerns or complaints the resident may have regarding:
 - (i) the resident's treatment at the assisted living facility; and
 - (ii) whether the assisted living facility treated the resident fairly when the assisted living facility transferred or discharged the resident.
- (3) On or before November 1 of each year, the ombudsman shall provide a report to the Health and Human Services Interim Committee regarding:
- (a) the reasons why assisted living facilities are transferring residents;
 - (b) where residents are going upon transfer or discharge; and
 - (c) the type and prevalence of complaints that the ombudsman receives regarding assisted living facilities, including complaints about the process or reasons for a transfer or discharge.

Renumbered and Amended by Chapter 305, 2023 General Session

Part 4

Child Care Licensing

26B-2-401 Definitions.

As used in this part:

- (1) "Capacity limit" means the maximum number of qualifying children that a regulated provider may care for at any given time, in accordance with rules made by the department.

- (2)
 - (a) "Center based child care" means child care provided in a facility or program that is not the home of the provider.
 - (b) "Center based child care" does not include:
 - (i) residential child care; or
 - (ii) care provided in a facility or program exempt under Section 26B-2-405.
- (3) "Certified provider" means a person who holds a certificate from the department under Section 26B-2-404.
- (4) "Child care" means continuous care and supervision of a qualifying child, that is:
 - (a) in lieu of care ordinarily provided by a parent in the parent's home;
 - (b) for less than 24 hours a day; and
 - (c) for direct or indirect compensation.
- (5) "Child care program" means a child care facility or program operated by a regulated provider.
- (6) "Exempt provider" means a person who provides care described in Subsection 26B-2-405(2).
- (7) "Licensed provider" means a person who holds a license from the department under Section 26B-2-403.
- (8) "Licensing committee" means the Child Care Provider Licensing Committee created in Section 26B-1-204.
- (9) "Public school" means:
 - (a) a school, including a charter school, that:
 - (i) is directly funded at public expense; and
 - (ii) provides education to qualifying children for any grade from first grade through twelfth grade; or
 - (b) a school, including a charter school, that provides:
 - (i) preschool or kindergarten to qualifying children, regardless of whether the preschool or kindergarten is funded at public expense; and
 - (ii) education to qualifying children for any grade from first grade through twelfth grade, if each grade, from first grade to twelfth grade, that is provided at the school, is directly funded at public expense.
- (10) "Qualifying child" means an individual who is:
 - (a)
 - (i) under the age of 13 years old; or
 - (ii) under the age of 18 years old, if the person has a disability; and
 - (b) a child of:
 - (i) a person other than the person providing care to the child;
 - (ii) a regulated provider, if the child is under the age of four; or
 - (iii) an employee or owner of a licensed child care center, if the child is under the age of four.
- (11) "Regulated provider" means a licensed provider or certified provider.
- (12) "Residential child care" means child care provided in the home of the provider.

Amended by Chapter 249, 2023 General Session

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-402 Duties of the department -- Enforcement of part -- Licensing committee requirements.

- (1) With regard to residential child care licensed or certified under this part, the department may:
 - (a) make and enforce rules to implement this part and, as necessary to protect qualifying children's common needs for a safe and healthy environment, to provide for:

- (i) adequate facilities and equipment; and
 - (ii) competent caregivers, considering the age of the children and the type of program offered by the licensee; and
- (b) make and enforce rules necessary to carry out the purposes of this part, in the following areas:
 - (i) requirements for applications, the application process, and compliance with other applicable statutes and rules;
 - (ii) documentation and policies and procedures that providers shall have in place in order to be licensed, in accordance with Subsection (1)(a);
 - (iii) categories, classifications, and duration of initial and ongoing licenses;
 - (iv) changes of ownership or name, changes in licensure status, and changes in operational status;
 - (v) license expiration and renewal, contents, and posting requirements;
 - (vi) procedures for inspections, complaint resolution, disciplinary actions, and other procedural measures to encourage and assure compliance with statute and rule; and
 - (vii) guidelines necessary to assure consistency and appropriateness in the regulation and discipline of licensees.
- (2) The department shall enforce the rules established by the licensing committee, with the concurrence of the department, for center based child care.
- (3) The department shall make rules that allow a regulated provider to provide after school child care for a reasonable number of qualifying children in excess of the regulated provider's capacity limit, without requiring the regulated provider to obtain a waiver or new license from the department.
- (4) Rules made under this part by the department, or the licensing committee with the concurrence of the department, shall be made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (5)
 - (a) The licensing committee and the department may not regulate educational curricula, academic methods, or the educational philosophy or approach of the provider.
 - (b) The licensing committee and the department shall allow for a broad range of educational training and academic background in certification or qualification of child day care directors.
- (6) In licensing and regulating child care programs, the licensing committee and the department shall reasonably balance the benefits and burdens of each regulation and, by rule, provide for a range of licensure, depending upon the needs and different levels and types of child care provided.
- (7) Notwithstanding the definition of "qualifying child" in Section 26B-2-401, the licensing committee and the department shall count children through age 12 and children with disabilities through age 18 toward the minimum square footage requirement for indoor and outdoor areas, including the child of:
 - (a) a licensed residential child care provider; or
 - (b) an owner or employee of a licensed child care center.
- (8) Notwithstanding Subsection (1)(a)(i), the licensing committee and the department may not exclude floor space used for furniture, fixtures, or equipment from the minimum square footage requirement for indoor and outdoor areas if the furniture, fixture, or equipment is used:
 - (a) by qualifying children;
 - (b) for the care of qualifying children; or
 - (c) to store classroom materials.
- (9)

- (a) A child care center constructed prior to January 1, 2004, and licensed and operated as a child care center continuously since January 1, 2004, is exempt from the licensing committee's and the department's group size restrictions, if the child to caregiver ratios are maintained, and adequate square footage is maintained for specific classrooms.
- (b) An exemption granted under Subsection (9)(a) is transferrable to subsequent licensed operators at the center if a licensed child care center is continuously maintained at the center.
- (10) The licensing committee, with the concurrence of the department, shall develop, by rule, a five-year phased-in compliance schedule for playground equipment safety standards.
- (11) The department shall set and collect licensing and other fees in accordance with Section 26B-1-209.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-403 Licensure requirements -- Expiration -- Renewal.

- (1) Except as provided in Section 26B-2-405, and subject to Subsection (2), a person shall obtain a license from the department if:
 - (a) the person provides center based child care for five or more qualifying children;
 - (b) the person provides residential child care for nine or more qualifying children; or
 - (c) the person:
 - (i) provides child care;
 - (ii) is not required to obtain a license under Subsection (1)(a) or (b); and
 - (iii) requests to be licensed.
- (2) Notwithstanding Subsection (1), a certified provider may, in accordance with rules made by the department under Subsection 26B-2-402(3), exceed the certified provider's capacity limit to provide after school child care without obtaining a license from the department.
- (3) The department may issue licenses for a period not exceeding 24 months to child care providers who meet the requirements of:
 - (a) this part; and
 - (b) the department's rules governing child care programs.
- (4) A license issued under this part is not assignable or transferable.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-404 Residential Child Care Certificate.

- (1) Except as provided in Section 26B-2-405, a person shall obtain a Residential Child Care Certificate from the department if:
 - (a) the person provides residential child care for seven or eight qualifying children; or
 - (b) the person:
 - (i) provides residential child care for six or less qualifying children; and
 - (ii) requests to be certified.
- (2) The minimum qualifications for a Residential Child Care Certificate are:
 - (a) the submission of:
 - (i) an application in the form prescribed by the department;
 - (ii) a certification and criminal background fee established in accordance with Section 26B-1-209; and
 - (iii) in accordance with Section 26B-2-406, identifying information for each adult person and each juvenile age 12 through 17 years old who resides in the provider's home:

- (A) for processing by the Department of Public Safety to determine whether any such person has been convicted of a crime;
- (B) to screen for a substantiated finding of child abuse or neglect by a juvenile court; and
- (C) to discover whether the person is listed in the Licensing Information System described in Section 80-2-1002;
- (b) an initial and annual inspection of the provider's home within 90 days of sending an intent to inspect notice to:
 - (i) check the immunization record, as defined in Section 53G-9-301, of each qualifying child who receives child care in the provider's home;
 - (ii) identify serious sanitation, fire, and health hazards to qualifying children; and
 - (iii) make appropriate recommendations; and
- (c) annual training consisting of 10 hours of department-approved training as specified by the department by administrative rule, including a current department-approved CPR and first aid course.
- (3) If a serious sanitation, fire, or health hazard has been found during an inspection conducted pursuant to Subsection (2)(b), the department shall require corrective action for the serious hazards found and make an unannounced follow up inspection to determine compliance.
- (4) In addition to an inspection conducted pursuant to Subsection (2)(b), the department may inspect the home of a certified provider in response to a complaint of:
 - (a) child abuse or neglect;
 - (b) serious health hazards in or around the provider's home; or
 - (c) providing residential child care without the appropriate certificate or license.
- (5) With respect to residential child care, the department may only make and enforce rules necessary to implement this section.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-405 Exclusions from part -- Criminal background checks by an excluded person.

- (1)
 - (a) Except as provided in Subsection (1)(b), the provisions and requirements of this part do not apply to:
 - (i) a facility or program owned or operated by an agency of the United States government;
 - (ii) group counseling provided by a mental health therapist, as defined in Section 58-60-102, who is licensed to practice in this state;
 - (iii) a health care facility licensed under Part 2, Health Care Facility Licensing and Inspection;
 - (iv) care provided to a qualifying child by or in the home of a parent, legal guardian, grandparent, brother, sister, uncle, or aunt;
 - (v) care provided to a qualifying child, in the home of the provider, for less than four hours a day or on a sporadic basis, unless that child care directly affects or is related to a business licensed in this state;
 - (vi) care provided at a residential support program that is licensed by the department;
 - (vii) center based child care for four or less qualifying children, unless the provider requests to be licensed under Section 26B-2-403; or
 - (viii) residential child care for six or less qualifying children, unless the provider requests to be licensed under Section 26B-2-403 or certified under Section 26B-2-404.
 - (b) Notwithstanding Subsection (1)(a), a person who does not hold a license or certificate from the department under this part may not, at any given time, provide child care in the person's

home for more than 10 children in total under the age of 13, or under the age of 18 if a child has a disability, regardless of whether a child is related to the person providing child care.

(2) The licensing and certification requirements of this part do not apply to:

- (a) care provided to a qualifying child as part of a course of study at or a program administered by an educational institution that is regulated by the boards of education of this state, a private education institution that provides education in lieu of that provided by the public education system, or by a parochial education institution;
 - (b) care provided to a qualifying child by a public or private institution of higher education, if the care is provided in connection with a course of study or program, relating to the education or study of children, that is provided to students of the institution of higher education;
 - (c) care provided to a qualifying child at a public school by an organization other than the public school, if:
 - (i) the care is provided under contract with the public school or on school property; or
 - (ii) the public school accepts responsibility and oversight for the care provided by the organization;
 - (d) care provided to a qualifying child as part of a summer camp that operates on federal land pursuant to a federal permit;
 - (e) care provided by an organization that:
 - (i) qualifies for tax exempt status under Section 501(c)(3) of the Internal Revenue Code;
 - (ii) provides care pursuant to a written agreement with:
 - (A) a municipality, as defined in Section 10-1-104, that provides oversight for the program; or
 - (B) a county that provides oversight for the program; and
 - (iii) provides care to a child who is over the age of four and under the age of 13; or
 - (f) care provided to a qualifying child at a facility where:
 - (i) the parent or guardian of the qualifying child is at all times physically present in the building where the care is provided and the parent or guardian is near enough to reach the child within five minutes if needed;
 - (ii) the duration of the care is less than four hours for an individual qualifying child in any one day;
 - (iii) the care is provided on a sporadic basis;
 - (iv) the care does not include diapering a qualifying child; and
 - (v) the care does not include preparing or serving meals to a qualifying child.
- (3) An exempt provider shall submit to the department:
- (a) the information required under Subsections 26B-2-406(1) and (2); and
 - (b) of the children receiving care from the exempt provider:
 - (i) the number of children who are less than two years old;
 - (ii) the number of children who are at least two years old and less than five years old; and
 - (iii) the number of children who are five years old or older.
- (4) An exempt provider shall post, in a conspicuous location near the entrance of the exempt provider's facility, a notice prepared by the department that:
- (a) states that the facility is exempt from licensure and certification; and
 - (b) provides the department's contact information for submitting a complaint.
- (5)
- (a) Except as provided in Subsection (5)(b), the department may not release the information the department collects from exempt providers under Subsection (3).
 - (b) The department may release an aggregate count of children receiving care from exempt providers, without identifying a specific provider.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-406 Disqualified individuals -- Criminal history checks -- Payment of costs.

- (1)
- (a) Each exempt provider, except as provided in Subsection (1)(c), and each person requesting a residential certificate or to be licensed or to renew a license under this part shall submit to the department the name and other identifying information, which shall include fingerprints, of existing, new, and proposed:
 - (i) owners;
 - (ii) directors;
 - (iii) members of the governing body;
 - (iv) employees;
 - (v) providers of care;
 - (vi) volunteers, except parents of children enrolled in the programs; and
 - (vii) all adults residing in a residence where child care is provided.
 - (b)
 - (i) The Utah Division of Criminal Investigation and Technical Services within the Department of Public Safety shall process the information required under Subsection (1)(a) to determine whether the individual has been convicted of any crime.
 - (ii) The Utah Division of Criminal Investigation and Technical Services shall submit fingerprints required under Subsection (1)(a) to the FBI for a national criminal history record check.
 - (iii) A person required to submit information to the department under Subsection (1) shall pay the cost of conducting the record check described in this Subsection (1)(b).
 - (c) An exempt provider who provides care to a qualifying child as part of a program administered by an educational institution that is regulated by the State Board of Education is not subject to this Subsection (1), unless required by the Child Care and Development Block Grant, 42 U.S.C. Secs. 9857-9858r.
- (2)
- (a) Each person requesting a residential certificate or to be licensed or to renew a license under this part shall submit to the department the name and other identifying information of any person age 12 through 17 who resides in the residence where the child care is provided. The identifying information required for a person age 12 through 17 does not include fingerprints.
 - (b) The department shall access the juvenile court records to determine whether a person described in Subsection (1) or (2)(a) has been adjudicated in juvenile court of committing an act which if committed by an adult would be a felony or misdemeanor if:
 - (i) the person described in Subsection (1) is under the age of 28; or
 - (ii) the person described in Subsection (1) is:
 - (A) over the age of 28; and
 - (B) has been convicted, has pleaded no contest, or is currently subject to a plea in abeyance or diversion agreement for a felony or misdemeanor.
- (3) Except as provided in Subsections (4) and (5), a licensee under this part or an exempt provider may not permit a person who has been convicted, has pleaded no contest, or is currently subject to a plea in abeyance or diversion agreement for any felony or misdemeanor, or if the provisions of Subsection (2)(b) apply, who has been adjudicated in juvenile court of committing an act which if committed by an adult would be a felony or a misdemeanor, to:
- (a) provide child care;
 - (b) provide volunteer services for a child care program or an exempt provider;
 - (c) reside at the premises where child care is provided; or

- (d) function as an owner, director, or member of the governing body of a child care program or an exempt provider.
- (4)
 - (a) The department may, by rule, exempt the following from the restrictions of Subsection (3):
 - (i) specific misdemeanors; and
 - (ii) specific acts adjudicated in juvenile court, which if committed by an adult would be misdemeanors.
 - (b) In accordance with criteria established by rule, the executive director may consider and exempt individual cases not otherwise exempt under Subsection (4)(a) from the restrictions of Subsection (3).
- (5) The restrictions of Subsection (3) do not apply to the following:
 - (a) a conviction or plea of no contest to any nonviolent drug offense that occurred on a date 10 years or more before the date of the criminal history check described in this section; or
 - (b) if the provisions of Subsection (2)(b) apply, any nonviolent drug offense adjudicated in juvenile court on a date 10 years or more before the date of the criminal history check described in this section.
- (6) The department may retain background check information submitted to the department for up to one year after the day on which the covered individual is no longer associated with a Utah child care provider.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-407 Drinking water quality in child care centers.

A child care center, as defined in Section 19-4-115, may comply with Section 19-4-115.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-408 Investigations -- Records.

- (1) As used in this section:
 - (a) "Anonymous complainant" means a complainant for whom the department does not have the minimum personal identifying information necessary, including the complainant's full name, to attempt to communicate with the complainant after a complaint has been made.
 - (b) "Confidential complainant" means a complainant for whom the department has the minimum personal identifying information necessary, including the complainant's full name, to attempt to communicate with the complainant after a complaint has been made, but who elects under Subsection (3)(c) not to be identified to the subject of the complaint.
 - (c) "Subject of the complaint" means the licensee or certificate holder about whom the complainant is informing the department.
- (2) The department may conduct investigations necessary to enforce the provisions of this part.
- (3)
 - (a) If the department receives a complaint about a child care program or an exempt provider, the department shall:
 - (i) solicit information from the complainant to determine whether the complaint suggests actions or conditions that could pose a serious risk to the safety or well-being of a qualifying child;
 - (ii) as necessary:
 - (A) encourage the complainant to disclose the minimum personal identifying information necessary, including the complainant's full name, for the department to attempt to subsequently communicate with the complainant;

- (B) inform the complainant that the department may not investigate an anonymous complaint;
- (C) inform the complainant that the identity of a confidential complainant may be withheld from the subject of a complaint only as provided in Subsection (3)(c)(ii); and
- (D) inform the complainant that the department may be limited in its use of information provided by a confidential complainant, as provided in Subsection (3)(c)(ii)(B); and
- (iii) inform the complainant that a person is guilty of a class B misdemeanor under Section 76-8-506 if the person gives false information to the department with the purpose of inducing a change in that person's or another person's licensing or certification status.
- (b) If the complainant elects to be an anonymous complainant, or if the complaint concerns events which occurred more than six weeks before the complainant contacted the department:
 - (i) shall refer the information in the complaint to the Division of Child and Family Services within the department, law enforcement, or any other appropriate agency, if the complaint suggests actions or conditions which could pose a serious risk to the safety or well-being of a child;
 - (ii) may not investigate or substantiate the complaint; and
 - (iii) may, during a regularly scheduled annual survey, inform the exempt provider, licensee, or certificate holder that is the subject of the complaint of allegations or concerns raised by:
 - (A) the anonymous complainant; or
 - (B) the complainant who reported events more than six weeks after the events occurred.
- (c)
 - (i) If the complainant elects to be a confidential complainant, the department shall determine whether the complainant wishes to remain confidential:
 - (A) only until the investigation of the complaint has been completed; or
 - (B) indefinitely.
 - (ii)
 - (A) If the complainant elects to remain confidential only until the investigation of the complaint has been completed, the department shall disclose the name of the complainant to the subject of the complaint at the completion of the investigation, but no sooner.
 - (B) If the complainant elects to remain confidential indefinitely, the department:
 - (I) notwithstanding Subsection 63G-2-201(5)(b), may not disclose the name of the complainant, including to the subject of the complaint; and
 - (II) may not use information provided by the complainant to substantiate an alleged violation of state law or department rule unless the department independently corroborates the information.
- (4)
 - (a) Prior to conducting an investigation of a child care program or an exempt provider in response to a complaint, a department investigator shall review the complaint with the investigator's supervisor.
 - (b) The investigator may proceed with the investigation only if:
 - (i) the supervisor determines the complaint is credible;
 - (ii) the complaint is not from an anonymous complainant; and
 - (iii) prior to the investigation, the investigator informs the subject of the complaint of:
 - (A) except as provided in Subsection (3)(c), the name of the complainant; and
 - (B) except as provided in Subsection (4)(c), the substance of the complaint.
 - (c) An investigator is not required to inform the subject of a complaint of the substance of the complaint prior to an investigation if doing so would jeopardize the investigation. However,

the investigator shall inform the subject of the complaint of the substance of the complaint as soon as doing so will no longer jeopardize the investigation.

- (5) If the department is unable to substantiate a complaint, any record related to the complaint or the investigation of the complaint:
- (a) shall be classified under Title 63G, Chapter 2, Government Records Access and Management Act, as:
 - (i) a private or controlled record if appropriate under Section 63G-2-302 or 63G-2-304; or
 - (ii) a protected record under Section 63G-2-305; and
 - (b) if disclosed in accordance with Subsection 63G-2-201(5)(b), may not identify an individual child care program, exempt provider, licensee, certificate holder, or complainant.
- (6) Any record of the department related to a complaint by an anonymous complainant is a protected record under Title 63G, Chapter 2, Government Records Access and Management Act, and, notwithstanding Subsection 63G-2-201(5)(b), may not be disclosed in a manner that identifies an individual child care program, exempt provider, licensee, certificate holder, or complainant.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-409 License violations -- Penalties.

- (1) The department may deny or revoke a license and otherwise invoke disciplinary penalties if it finds:
- (a) evidence of committing or of aiding, abetting, or permitting the commission of any illegal act on the premises of the child care facility;
 - (b) a failure to meet the qualifications for licensure; or
 - (c) conduct adverse to the public health, morals, welfare, and safety of children under its care.
- (2) The department may also place a department representative as a monitor in a facility, and may assess the cost of that monitoring to the facility, until the licensee has remedied the deficiencies that brought about the department action.
- (3) The department may impose civil monetary penalties in accordance with Title 63G, Chapter 4, Administrative Procedures Act, if there has been a failure to comply with the provisions of this part, or rules made pursuant to this part, as follows:
- (a) if significant problems exist that are likely to lead to the harm of a qualifying child, the department may impose a civil penalty of \$50 to \$1,000 per day; and
 - (b) if significant problems exist that result in actual harm to a qualifying child, the department may impose a civil penalty of \$1,050 to \$5,000 per day.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-410 Offering or providing care in violation of part -- Misdemeanor.

Notwithstanding the provisions of Section 26B-1-224, a person who provides or offers child care except as provided by this part is guilty of a class A misdemeanor.

Renumbered and Amended by Chapter 305, 2023 General Session

**Part 5
Certifications**

26B-2-501 Definitions.

As used in this part:

- (1) "Capacity building" means strengthening an individual's or a community's ability to participate in shared decision making.
- (2) "Community health worker" means an individual who:
 - (a) works to improve a social determinant of health;
 - (b) acts as an intermediary between a community and health services or social services to:
 - (i) facilitate access to services; or
 - (ii) improve the quality and cultural competence of service delivery; and
 - (c) increases health knowledge and self-sufficiency of an individual or a community through outreach, capacity building, community education, informal counseling, social support, and other similar activities.
- (3) "Core-skill education" means education regarding each of the following:
 - (a) self-reliance;
 - (b) outreach;
 - (c) capacity building;
 - (d) individual and community assessment;
 - (e) coordination skills;
 - (f) relationship building;
 - (g) facilitation of services;
 - (h) communication;
 - (i) professional conduct; and
 - (j) health promotion.
- (4) "Core-skill training" means:
 - (a) 90 hours of competency-based education; and
 - (b) 300 hours of community involvement as determined by the department through rule.
- (5) "Social determinate of health" means any condition in which an individual or a community lives, learns, works, plays, worships, or ages, that affects the individual's or the community's health or quality of life outcomes or risks.
- (6) "State certified" means that an individual has obtained the state certification described in Subsection 26B-2-504(1).

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-502 Rulemaking.

The department may make rules as authorized by this part in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-503 Recommendation for Community Health Worker Certification Advisory Board.

The department shall notify the Health and Human Services Interim Committee if the department determines that there is a need to create, by statute, a Community Health Worker Certification Advisory Board.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-504 Certification -- Unlawful conduct.

- (1) The department shall issue to an individual who qualifies under Section 26B-2-505 a certification as a state certified community health worker.
- (2) An individual may not use the term "state certified" in conjunction with the individual's work as a community health worker if the individual is not state certified.
- (3) The department may fine an individual who violates Subsection (2) in an amount up to \$100.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-505 Qualifications for certification.

- (1) The department shall issue a certification described in Section 26B-2-504 to a community health worker if the community health worker has:
 - (a) completed core-skill training administered by:
 - (i) the department;
 - (ii) a state professional association that:
 - (A) is associated with the community health worker profession; and
 - (B) is aligned with a national community health worker professional association; or
 - (iii) an entity designated by a state professional association described in Subsection (1)(a)(ii);
 - (b) completed training regarding basic medical confidentiality requirements, including the confidentiality requirements of HIPAA as defined in Section 26B-8-514;
 - (c) completed an application as designed by the department with a signed statement agreeing to abide by national standards of practice and ethics for community health workers; and
 - (d) paid a fee established by the department under Section 63J-1-504.
- (2) A community health worker with at least 4,000 hours of experience as a community health worker is exempt from the core-skill training requirement described in Subsection (1)(a).

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-506 Certification is voluntary.

This part does not prohibit an individual from acting as a community health worker if the individual does not have a certificate described in this part.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-507 Term of certification - Expiration - Renewal.

- (1) Subject to Subsection (2), the department shall issue each certification under Section 26B-2-504 in accordance with a two-year renewal cycle.
- (2) The department may by rule extend or shorten a renewal cycle by as much as one year to stagger the renewal cycles that the department administers.
- (3)
 - (a) The department shall print the expiration date on the certification.
 - (b) Each certification automatically expires on the date shown on the certificate.
 - (c) The department shall establish procedures through rule to notify each state certified community health worker when the certification is due for renewal.
- (4)
 - (a) The department shall renew a certification if the individual has:
 - (i) met each renewal requirement established by the department through rule; and
 - (ii) paid a certification renewal fee established by the department.

- (b) A rule created by the department under Subsection (4)(a)(i) shall include a requirement regarding:
 - (i) continuing education; and
 - (ii) maintaining professional conduct.

Renumbered and Amended by Chapter 305, 2023 General Session

Part 6

Mammography Quality Assurance

26B-2-601 Definitions.

As used in this part:

- (1) "Diagnostic mammography" means mammography performed on a woman having suspected breast cancer.
- (2) "Facility" means a facility that provides screening or diagnostic breast mammography services.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-602 Department rulemaking authority.

The department shall make rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

- (1) establishing quality assurance standards for all facilities performing screening or diagnostic mammography and developing mammogram x-ray films, including notification and procedures for clinical follow-up of abnormal mammograms;
- (2) providing for:
 - (a) collection and periodic reporting of mammography examinations and clinical follow-up data to the department;
 - (b) certification and revocation of certification of mammogram facilities;
 - (c) inspection of mammogram facilities, including entry of agents of the department into the facilities for inspections;
 - (d) setting fees for certification; and
 - (e) an appeal process regarding department certification decisions; and
- (3) requiring a facility that is certified under Section 26B-2-603 to comply with the notification requirement described in Section 26B-2-605.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-603 Mammogram provider certification.

- (1) A mammogram may only be performed in a facility the department certifies as meeting:
 - (a) the qualifications and standards under Section 26B-2-602; and
 - (b) the registration, licensing, and inspection requirements for radiation sources under Section 19-3-104.
- (2) Facilities desiring to perform mammograms shall request certification as a mammogram provider by the department under procedures established by department rule.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-604 Department duties.

The department shall:

- (1) enforce rules established under this part;
- (2) implement and enforce the notice requirement in Section 26B-2-605;
- (3) authorize qualified department agents to conduct inspections of mammogram facilities under department rules;
- (4) collect and credit fees for certification established by the department in accordance with Section 63J-1-504; and
- (5) provide necessary administrative and staff support to the committee.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-605 Women's cancer screening notification requirement.

- (1) As used in this section, "dense breast tissue" means heterogeneously dense tissue or extremely dense tissue as defined in the Breast Imaging and Reporting Data System established by the American College of Radiology.
- (2) A facility that is certified under Section 26B-2-603 shall include the following notification and information with a mammography result provided to a patient with dense breast tissue:

"Your mammogram indicates that you have dense breast tissue. Dense breast tissue is common and is found in as many as half of all women. However, dense breast tissue can make it more difficult to fully and accurately evaluate your mammogram and detect early signs of possible cancer in the breast. This information is being provided to inform and encourage you to discuss your dense breast tissue and other breast cancer risk factors with your health care provider. Together, you can decide what may be best for you. A copy of your mammography report has been sent to your health care provider. Please contact them if you have any questions or concerns about this notice."

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-606 Breast cancer mortality reduction program.

The department shall create a breast cancer mortality reduction program. The program shall include:

- (1) education programs for health professionals regarding skills in cancer screening, diagnosis, referral, treatment, and rehabilitation based on current scientific knowledge;
- (2) education programs to assist the public in understanding:
 - (a) the benefits of regular breast cancer screening;
 - (b) resources available in the medical care system for cancer screening, diagnosis, referral, treatment, and rehabilitation; and
 - (c) available options for treatment of breast cancer and the ramifications of each approach; and
- (3) subsidized screening mammography for low-income women as determined by the department standards.

Renumbered and Amended by Chapter 305, 2023 General Session